

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 PORTLAND DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) Case No. 3:12-cv-02265-SI
7)
8 v.) February 25, 2020
9)
THE CITY OF PORTLAND,)
10)
11 Defendant.) Portland, Oregon
12)

13)

14 STATUS CONFERENCE

15 TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE MICHAEL H. SIMON

17 UNITED STATES DISTRICT COURT JUDGE

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1 TRANSCRIPT OF PROCEEDINGS

2 (February 25, 2020)

3 (In open court:)

4 DEPUTY COURTROOM CLERK: Your Honor, this is the time
5 set for status conference in Civil Case 12-02265-SI, United
6 States of America v. City of Portland.

7 Can I have counsel, beginning with the government, please
8 identify yourself for the record.

9 MR. GEISSLER: Good morning, Your Honor.

10 Jonas Geissler of DOJ Civil Rights Division for the United
11 States.

12 THE COURT: Good morning.

13 MR. HAGER: Jared Hager, U.S. Attorney's Office, for
14 the United States.

15 THE COURT: Good morning.

16 MS. GOWIE: Renata Gowie.

17 THE COURT: Good morning.

18 MS. GOWIE: Civil chief of the U.S. Attorney's
19 Office.

20 THE COURT: Good morning.

21 MR. WILLIAMS: Good morning, Your Honor.
22 Bill Williams, U.S. Attorney.

23 THE COURT: Good morning, sir.

24 MS. ALBIES: Ashlee Albies for Albina Ministerial
25 Alliance Coalition for Justice and Police Reform.

1 THE COURT: Good morning.

2 MS. CHAMBERS: And Kristen Chambers for AMAC as well.

3 THE COURT: Good morning.

4 MR. CHAVEZ: Good morning, Your Honor. Juan Chavez
5 for the Mental Health Alliance.

6 THE COURT: Good morning.

7 DR. HAYNES: Dr. LeRoy Haynes, Jr., for the AMAC
8 Coalition.

9 THE COURT: Good morning, sir.

10 MR. KARIA: Good morning, Your Honor. Anil Karia for
11 the Portland Police Association.

12 THE COURT: Good morning.

13 MS. REEVE: Good morning, Your Honor. Tracy Reeve
14 for the City of Portland.

15 THE COURT: Good morning.

16 MR. VANNIER: Good morning, Your Honor.
17 Denis Vannier for the City of Portland.

18 THE COURT: Good morning. Welcome to you all.

19 I want to do something a little bit differently at this
20 status conference. As you all know, there are primarily two
21 sections of the settlement agreement that still are under
22 active review and have generated some controversy from the
23 original settlement agreement, the accountability section,
24 Section 8, and the community engagement and creation of the --
25 now called the Portland Committee on Community-Engaged

1 Policing, the PCCEP, from Section 9.

2 As amended, as of our last status conference, which we
3 held on June 6, 2019, I think everyone was in agreement that
4 the City of Portland was not yet in substantial compliance with
5 those two sections of the settlement agreement. At that
6 conference on June 6th, I stated that I wanted to see
7 substantial compliance with the proposed amendments -- at least
8 many of the proposed amendments were approved unconditionally.
9 I had only given conditional approval on two amendments, and I
10 wanted to see substantial compliance with those proposed
11 amendments, for which I had only given conditional approval,
12 for at least six months before granting final approval.

13 Now, in preparation for today's status conference, I have
14 received and read submissions from a number of organizations
15 and people. Let me summarize some of the key points for you
16 because I think this will frame our discussion this morning.
17 And, also, if you do not hear your name mentioned or your
18 organization mentioned and you have submitted written comments,
19 that means that I have not seen them. So please let's fix
20 that. But let me tell you what I have seen.

21 I'm going to start by acknowledging that I have received
22 the report from the plaintiff, United States, as represented by
23 the U.S. Department of Justice, and at the beginning of that
24 report, the plaintiff, United States, states, quote, "As
25 detailed in this report, the United States now finds that the

1 City has achieved substantial compliance with all components of
2 these two sections as of January 10, 2020." Two weeks ago.

3 That's from Docket 212 at page 2.

4 I have also received and read submissions from the City of
5 Portland. And in the City of Portland's third memorandum,
6 updating the status of the Portland Committee on
7 Community-Engaged Policing, the PCCEP, in support of the final
8 approval of the settlement agreement amendments to sections 9
9 and 10, the City stated, quote, "The compliance officer and the
10 Department of Justice have now found that the City is in
11 substantial compliance with these sections and has been for a
12 number of months."

13 That's from Docket 214 at pages 1 to 2, and the City was
14 referring to and citing the report from the COCL. Basically
15 the report titled Compliance and Outcome Assessment Report of
16 the Compliance Officer and Community Liaison, the C-O-C-L, the
17 COCL, dated November 21, 2019.

18 And that can be found at Docket 211-1.

19 I have also received and read the submission, the recent
20 submission, from the Albina Ministerial Alliance for Justice
21 and Police Reform, and in their February 2020 status report of
22 the Albina Ministerial Alliance for Justice and Police Reform,
23 the AMA Coalition stated, quote, "The City has made some
24 progress with the PCCEP, including training, holding meetings,
25 and replacing members. In addition, most of the PCCEP members

1 seem to be well-qualified and dedicated to making the committee
2 a success. However, the AMA Coalition still has serious
3 concerns about the PCCEP. The AMA Coalition's current
4 evaluation of the PCCEP's effectiveness based on the
5 qualitative and quantitative measurements presented to the
6 Court prior to the June 2019 hearing is as follows." And then
7 they have identified -- that's the end of the quote.

8 Then they have identified 17 specific issues under the
9 heading Quantitative Measures and an additional seven issues
10 under the heading Qualitative Measures.

11 And The AMA Coalition notes that the City should not be
12 found by the Court to be in substantial compliance with the
13 community oversight and engagement and mental health crises
14 sections of the settlement agreement. And The AMA Coalition
15 further recommends, quote, "that the Court should schedule
16 another hearing in six months, and order a local person to
17 serve as independent court monitor to evaluate the City's
18 progress in meeting the qualitative and quantitative measures
19 identified by The AMA Coalition," closed quote.

20 The AMA Coalition added that it agrees to advocate for the
21 implementation of the settlement agreement and PCCEP reforms
22 that The AMA Coalition supports and will oppose any attempts to
23 weaken or dilute the settlement agreement and the PCCEP reforms
24 that The AMA Coalition supports, but The AMA Coalition
25 concludes that the Court should, quote, "not rush through the

1 settlement agreement, particularly when it comes to community
2 oversight and engagement, and to allow more time for the City
3 to demonstrate its plan will be effective," closed quote.

4 That's from Docket 220.

5 I've also received and read the submission from the Mental
6 Health Alliance. In the submission by the Mental Health
7 Alliance, that organization states, quote, "We respectfully ask
8 that the Court further defer entry of the PCCEP amendments
9 until PCCEP has achieved substantial compliance for a period of
10 one year. We further request that the Court acknowledge that
11 the City is not in substantial compliance with the proposed
12 settlement agreement and should continue to submit status
13 reports to the Court until such compliance has been reached to
14 the Court's and the public's satisfaction. Lastly, we request
15 that the Court set a separate status conference to take comment
16 and testimony from the parties and the community regarding the
17 City's compliance or non-compliance with the community mental
18 health service's component of the settlement agreement," closed
19 quote.

20 That's from Docket 217.

21 I have also received a number of separate communications
22 that have not been filed in the court docket. If anyone wants
23 copies or needs copies of that, please see my courtroom deputy.
24 But let me identify for you what I have received so that you
25 all know. And I assume that the United States and the City and

1 the various amici have received copies of this; but, if not,
2 let my courtroom deputy know.

3 First of all, I have received the Portland -- the PCCEP,
4 the Portland Committee on Community-Engaged Policing, interim
5 compliance assessment report. I think that was submitted this
6 morning, and I read it this morning.

7 I have also received -- that was not yet filed. That's
8 not been filed, and I think it should be filed in the court
9 docket.

10 I have also received a number of separate comments -- five
11 specifically -- that I have received and read, and so if yours
12 is not among these, please know I have not received it, and if
13 you want to submit a hard copy, please do. But I have received
14 a report from Ms. Amanda J. Marshall, the co-chair of the PCCEP
15 Subcommittee for People with Mental Illness, the SPMI. I have
16 also received and read a report from Patrick Nolen, also a
17 co-chair of the PCCEP Subcommittee for People with Mental
18 Illness. I have received and read written testimony from
19 Meredith Mathis, who is a member of the SPMI. I have received
20 and read a report from Portland Copwatch. And, finally, I have
21 received and read a report from the League of Women Voters of
22 Portland.

23 So, again, if you submitted something, I have not received
24 it. So please make sure my courtroom deputy gets a copy of
25 that.

1 Based upon all of my reading, from the United States
2 reports to the City's reports to the COCL's reports to the
3 amici's reports, as well as the public reports, it appears to
4 me that there is a serious disagreement over whether or not the
5 City is in substantial compliance.

6 So rather than handling the status conference the way
7 we've done in the past, where I hear from the United States, I
8 hear from the City, I hear from the amici -- and, by the way, I
9 have -- Mr. Karia, I have not received anything in writing from
10 the Portland Police Association. I usually don't, but if you
11 have submitted something in writing, I didn't get it.

12 MR. KARIA: I did not submit anything in writing.

13 THE COURT: Thank you, sir.

14 So rather than handling things the way I have done it in
15 the past, where we hear from the United States, the City, the
16 Portland Police Association as intervenor, the amici, and then
17 members of the public, it would be more helpful to me to
18 understand the dispute and the potentially correct resolution
19 to the dispute over whether the City is or is not in
20 substantial compliance to hear first from some of the
21 organizations and people who contend that the City is not in
22 substantial compliance, and then I will ask the United States,
23 the City, the COCL, any other persons or organizations that
24 want to address that issue, to respond specifically to the
25 objections and the contentions that are made for why the

1 City -- or in what respect the City is not currently in
2 substantial compliance.

3 I think that will help bring the issue together so that
4 the answers will be clearer, and then I think at some point,
5 whether as part of those discussions or afterwards, we need to
6 have some discussion, and I would like some input from you all
7 as to what do we do next. Because as I read the settlement
8 agreement, there are a couple of pieces that may be at odds or
9 intention. For example, I don't think I have the authority to
10 order any remedial provisions, absent a motion from the United
11 States. If that's correct, well, then that's correct. I
12 follow the law. We believe in the rule of law in this
13 building.

14 And so what does that mean?

15 Similarly, the settlement agreement provides that it does
16 not end or terminate until at least one year after substantial
17 compliance. So if the finding of the Court is that there's no
18 substantial compliance -- and that sentence, of course, begins
19 with an "if." If that's the finding of the Court, then the
20 settlement agreement continues.

21 I'm not quite sure what the benefit is of a settlement
22 agreement continuing, absent the ability of the Court to
23 provide any remedial relief absent a motion by the United
24 States, and if the United States is of the opinion that there
25 is substantial compliance, then one can reasonably assume that

1 there will not be such a motion to enforce. But I don't know,
2 and I look forward to comments about that.

3 Similarly, there was a comment by one or more of the amici
4 and other commentators that I appoint a court monitor. To the
5 extent it makes sense, I will be glad to consider the
6 appointment of someone, though, who can monitor things and then
7 report back to us all -- report back to me and to you all. But
8 as I said, given the nature and the structure of this
9 particular settlement agreement, which is not a consent decree,
10 I don't think I have any authority to order any legal relief,
11 at least absent motion by the United States. And so your input
12 on that issue is invited and welcome as well.

13 And then -- I think I'll end it there. I do have a few
14 more observations I want to make. I may reserve those until a
15 little bit later.

16 It does seem to me to make sense now, if you are all
17 ready -- and I apologize for not giving you more advanced
18 notice, but these thoughts did not really emerge clearly to me
19 until I had completed all of the readings of the submissions,
20 which I had only fairly recently done. So I think it makes the
21 most sense to me to hear first, if they're ready, from
22 representatives of the Albina Ministerial -- you know what?
23 I'll put a footnote there. I have heard that at least one
24 person has a medical issue and would like to address the Court
25 first. I'm going to allow him to do that.

1 If there's anyone else who would like, for legitimate
2 needs, to speak first -- legitimate physical or other medical
3 needs, to speak first, let my courtroom deputy know, and I'll
4 be glad to accommodate whatever is reasonable.

5 So I'm going to let that one person speak first. After
6 that person, I would like to hear from the Albina Ministerial
7 Alliance for Justice and Police Reform, followed by the Mental
8 Health Alliance, followed by probably -- I don't feel strongly
9 about this order but Ms. Marshall, Mr. Nolen, Meredith Mathis,
10 Portland Copwatch, League of Women Voters, and then I think
11 there's one or two other people who have signed up.

12 And after that, we'll take a little recess, and then I
13 would invite either the United States or the City or the
14 Portland Police Association -- whatever order you think is
15 best -- to give some specific comments in response.

16 And, Ms. Albies, you have risen, but I wanted to call on
17 that other person first. Is there something you want to say?
18 Is that acceptable to AMA?

19 MS. ALBIES: We would appreciate a couple of minutes
20 to caucus, mostly because, as you know, my clients are the ones
21 who present the information, and I just want -- would
22 appreciate a moment to --

23 THE COURT: That's fine. And if you prefer, I would
24 be glad to call on the Mental Health Alliance first if they
25 don't need the time to caucus.

1 MR. GEISSLER: Pardon me. For the United States, two
2 issues, if you please.

3 THE COURT: Please.

4 MR. GEISSLER: May I take it, then, in Your Honor's
5 review of the reports, there's not an issue with respect to the
6 accountability section, Section 8?

7 THE COURT: I did not see one. And so if I missed
8 it, I hope someone will call that to my attention, but I did
9 not see one.

10 MR. GEISSLER: Thank you, Your Honor.

11 And with respect to the soliloquy between witnesses and
12 the Court today, may I take it, Your Honor, that this is going
13 to be in the same informal, non-sworn fashion as in the past?

14 THE COURT: Yes. And that's one of the issues that I
15 think I would like to hear some people's opinions on, but
16 not -- I mean, I don't want to have an evidentiary hearing
17 today. But if there really is a serious question remaining on
18 whether or not the City is in substantial compliance, then,
19 procedurally, what's the right way for the Court to resolve
20 that? Because I don't think that I can terminate the
21 litigation and conclude the settlement unless I make a finding
22 there has been substantial compliance for at least one year.
23 How do I go about reaching that conclusion if there is
24 disagreement, including among the amici as well as among the
25 public, with the representations of the plaintiff and the

1 defendant?

2 Should there be a -- an evidentiary hearing at some point
3 in which witnesses are called and witnesses are cross-examined?
4 So you are correct in your assumption. It is not my
5 expectation today to swear in anyone or to have an evidentiary
6 hearing, but I am curious as to if we leave the hearing today
7 concerned that there may be a serious evidentiary question,
8 if -- you know, if it's not an evidentiary question, if
9 everyone agrees on what the facts are but can dispute what
10 legal conclusions remain, that's more like a summary judgment
11 argument. We can have oral argument. But if there are
12 evidentiary matters in dispute that will inform whether or not
13 the City is in substantial compliance, what's the best way to
14 resolve those evidentiary disputes?

15 And I would very much appreciate both the United States'
16 and the City's, as well as anyone else's counsel and positions
17 on that question.

18 Does that answer your question?

19 MR. GEISSLER: It does, Your Honor. I'll accept your
20 initial invitation to not answer that question at this point in
21 time. Rather, the United States, I believe, would like to
22 caucus, discuss that among ourselves, and rely upon the past
23 practice in similar cases.

24 With respect to the testimony today, if Your Honor is
25 amenable, we would like to preserve on the record our

1 objections to anything based upon hearsay or other objections,
2 given that I believe some of these reports may not have the
3 evidentiary strength that one would normally anticipate in
4 testimony, nor the practice of providing expert reports on
5 which to rely and the opportunity to depose the witnesses.

6 THE COURT: Sure. You certainly, obviously, have
7 that objection noted, but I'll tell you I -- you have it, and
8 it's preserved, but I don't think it's needed because I don't
9 think this is the right vehicle or structure for the Court to
10 receive evidence and to make evidentiary findings on disputed
11 issues for exactly the reason, among others, that you have
12 identified. But I think if there are material pieces of
13 evidence that are in dispute, we need to resolve those in a way
14 that is either governed by the Federal Rules of Evidence or
15 make an explicit finding that the Federal Rules of Evidence
16 don't apply. And I'm not quite sure what the argument would be
17 there, but I would give everyone an opportunity -- everyone
18 appropriate an opportunity to address that point. But if the
19 Federal Rules of Evidence do apply, I think we need to apply
20 them.

21 In addition, to the extent that a material dispute of
22 evidence needs to be resolved by the Court and some type of
23 prehearing discovery is appropriate, I would want to give
24 everyone an opportunity to -- a reasonable opportunity to
25 obtain that discovery beforehand. So I don't really disagree

1 with the sentiment of your objection.

2 So to that extent, your objection is preserved, but I also
3 don't think it's necessary because I don't plan on making
4 evidentiary rulings based upon what we hear this morning.

5 MR. GEISSLER: I take it, then, that the testimony is
6 not of record and Your Honor does not anticipate
7 cross-examination today.

8 THE COURT: I do not -- for that reason, do not
9 anticipate cross-examination.

10 If, however, any of the parties or amici would like me to
11 ask a follow-up question to anyone that has submitted testimony
12 or information, submit it in writing to my courtroom deputy,
13 and I will certainly consider asking any appropriate follow-up
14 questions. But you are correct in your assumption that I do
15 not anticipate that anyone will be invited to cross-examine
16 anyone who speaks in the hearing.

17 MR. GEISSLER: Thank you, Your Honor.

18 THE COURT: Thank you.

19 All right. And, Ms. Albies, have you now had enough time
20 to confer, or do you -- or should we be going first to the
21 person who's asked for special allocation and then to the
22 Mental Health Alliance?

23 MS. ALBIES: I apologize. Your Honor, I didn't
24 interpret that as I should speak to my clients while the Court
25 was still talking, so I apologize about that.

1 THE COURT: That's fine. Let me ask --

2 MS. ALBIES: May I take a moment?

3 THE COURT: Let me ask Mr. Chavez. Would the Mental
4 Health Alliance be prepared to proceed after our -- I take our
5 first public member?

6 MR. CHAVEZ: We would, Your Honor.

7 THE COURT: Okay. So if I'm correct, and I don't
8 mean to say anything inappropriate, Mr. Walsh, I do know I've
9 received a request from you, sir, that because of medical
10 issues, you would prefer to address the Court first this
11 morning. You're welcome to do so.

12 If I misinterpreted something, then I apologize.

13 MR. WALSH: No, Your Honor.

14 THE COURT: All right. Then if you'll come forward,
15 I look forward to your comments.

16 Please identify yourself for the record whenever you're
17 ready.

18 MR. WALSH: My name is Joe Walsh. I represent
19 Individuals for Justice. My voice, as when I testified the
20 last time, has not improved. It's gotten worse. So I wrote
21 out what I'm going to say, and I can give that to you, and that
22 way it would make sense.

23 THE COURT: Please. That will be -- that will be
24 good.

25 MR. WALSH: So good morning, Your Honor. I want to

1 thank you for allowing me to come before you so soon in these
2 proceedings. I represent Individuals for Justice, and we take
3 the position that we need you to watch over this settlement
4 agreement longer.

5 We say to the DOJ and the City the results of your efforts
6 have not produced anything near substantial compliance with the
7 2014 settlement agreement.

8 When we all started this effort, because we had human
9 beings being shot, in too many cases killed on our streets by
10 the police. There was sufficient evidence of excessive force
11 that the DOJ started an investigation somewhere around 2011.
12 That's almost nine years ago.

13 Last December our police shot and killed a man known to
14 them to be mentally disabled. One officer who arrived at
15 the -- at the scene shot a non-lethal weapon, but the other
16 officer opened fire and killed Mr. Koben with an AR-15 with
17 three shots. One witness said they fired almost immediately
18 and there was little or no conversation. No de-escalation.

19 I think that was the fourth killing.

20 But I was corrected this morning. It was the fifth.

21 So how should we look to see if the City and the police
22 are stepping up or just hiding their contempt for the people of
23 Portland?

24 One of the action items that we submitted a number of
25 times is the fact that the majority of police do not even live

1 in this city. They act as an occupying force coming into the
2 city.

3 So when you have cops that live here, they are part of the
4 community. When you have cops coming into a city, it's an
5 occupation force. It's the worst possible scenario, but we do
6 nothing about it. For years, nothing.

7 There used to be a movie called *The Ghostbusters*, and
8 there was a great line in that movie: "Who you gonna call?"
9 Think about that. "Who you gonna call?" The Department of
10 Justice is being run by Attorney General Barr, who has made the
11 statement he wants out of these settlements. He doesn't want
12 to do these anymore. He wants to prop up the police, protect
13 them. So where is the Department of Justice in that? They are
14 our champions, or they were. There's only two principals in
15 this, and I know there are other people involved. If one is
16 corrupted and the City lies, so who do we call?

17 We ask that you stay with us. I wear this tie to honor
18 you, Judge Michael Simon. I trust you. There's nobody else in
19 this room I trust. Some of them I like; some of them I don't
20 like. But I trust you. You have to stay involved, whatever
21 authority you have. And I know it's complex, and I know that
22 the Department of Justice is not going to ask you to get more
23 involved.

24 So do what you can, and we will honor you and we will
25 praise you.

1 We live in terrible times right now. Not for me. I'm 77
2 and I'm dying. Not for me. But for my grandchildren and my
3 children, this republic is at stake, and it is here, too, when
4 people lie. And we say we are in compliance and we blew this
5 guy away, and they knew. They sent him to the hospital prior.
6 They knew he was in trouble. And his family don't understand.
7 They just -- if we call 9-1-1, they will send the police. They
8 will not send mental health people because there's a clause in
9 the instruction that says they can't respond if there's any
10 type of violence.

11 If you have somebody standing in the middle of a street
12 screaming, is that violence? Sure it is. The cops are going
13 to come.

14 We lost 92 people on the streets of Portland last year to
15 homelessness or, as one of my friends calls them, "the
16 evicted." I like that word because it's an ugly word. It's an
17 ugly word being out on the street. That's where they come
18 from. That's where this man came from -- in the suburb. He
19 came from the streets. He was mentally ill. Everybody knew
20 it. Nobody did anything that was significant, and we all stand
21 around and say, well, we're in compliance. In compliance for
22 what?

23 Now I'm going to shut up and listen to some people.

24 Thank you for your patience.

25 I think I went off script.

1 THE COURT: Mr. Walsh, thank you very much for making
2 the effort to come here with your medical issues. Thank you,
3 sir.

4 MR. WALSH: Should I give it to you?

5 THE COURT: Just give it to Mary. Give it to Mary,
6 and we'll give it to the court reporter later.

7 MR. WALSH: Later?

8 THE COURT: You can give it to Mary now, and I'll
9 make sure the court reporter gets it later. Thank you.

10 MR. WALSH: I'm out of here.

11 THE COURT: Oh, you've got extra copies. Okay.

12 All right. I would like to hear next from the amicus
13 curiae, Mental Health Alliance.

14 Mr. Chavez, or anyone else that you wish to designate.

15 MR. CHAVEZ: Good morning, Your Honor. If it's okay
16 with the Court, I would like to address the Court from my seat.

17 THE COURT: Of course. Wherever you wish.

18 MR. CHAVEZ: I, too, like *Ghostbusters* and that
19 phrase "Who you gonna call?" I think it's absolutely pertinent
20 to what it is that we submitted to the Court earlier yesterday.
21 Because as it stands, and this is a piece of "Who you gonna
22 call," the police are going to show up. Who are you going to
23 call in the community to oversee the City's compliance with the
24 settlement agreement? And currently we have PCCEP.

25 Now, PCCEP, as we brief in our materials, unfortunately,

1 has not had enough static support from within itself, so enough
2 people staying there and providing -- providing suggestions to
3 the City to then comment back, nor do we think has there been
4 other avenues for people to engage with their city on these
5 topics.

6 I should say that while we briefed six different topics in
7 our materials, some of those will be spoken to by members of
8 the public, particularly members from the SPMI, who you noted
9 earlier.

10 As well, we have a component in our brief regarding use of
11 force and some of the inadequate statistics that are involved
12 there, as well as what we can glean from that, the trend line
13 support that there has not been a decrease. That will be --
14 that portion will be spoken to by a member of Mental Health
15 Alliance, Mr. Michael Hopcroft.

16 Currently, he -- we were planning on having him speak
17 during this portion of the testimony; however, if it's all
18 right with the Court, we might move him to the public testimony
19 section.

20 Okay. So as the Court has identified, there is
21 disagreement as far as what substantial compliance looks like.
22 Particularly, since the Court had asked about PCCEP, we'll
23 focus on PCCEP.

24 We, as a number of members in this room, are volunteers,
25 and we volunteer for things because we believe in the mission

1 of that -- of whatever it is we're giving our time and the
2 resources and energy to, in the hopes that we would be heard
3 and that we would have an opportunity to be heard and that
4 something would be done about that.

5 Now, part of volunteering your time is perhaps -- perhaps
6 some bit of delusion that maybe there might be a response. But
7 we don't think we should be deluded. We think we should
8 actually have an opportunity to get feedback from the City, as
9 we outlined in our -- in our briefing. Currently, the City has
10 to provide, within 60 days, a response to PCCEP proposals.

11 We don't think that goes far enough to adequately show
12 that the City is engaging with the public. So we don't believe
13 that the PCCEP amendment to the settlement agreement is fair or
14 adequate on at least that ground.

15 But, again, to speak to attrition, the attrition rate for
16 PCCEP, at least from its initial members, is 85 percent.
17 Comparing to COAB, that's an even worse metric to judge PCCEP
18 by and, we think, speaks to the larger problem present, that
19 PCCEP is not a seaworthy vessel, as it stands, to get us to
20 wherever it is that we need to go regarding police
21 accountability, monitoring, and providing community --
22 community input on policing in this City.

23 Now, the -- the plaintiff and the defendant in this case
24 could, and rightfully, say that that's not entirely what we
25 envision with the settlement agreement. What we wanted was a

1 process to have a group like PCCEP. What we wanted was people
2 to step up and volunteer their time, not indefinitely, but for
3 there to be some vessel that's in place.

4 If the people who are on this vessel are constantly
5 bailing out water or jumping ship, how are we to say that this
6 ship will go anywhere? We think that we need to have some
7 metric and something from the Court informing the parties that
8 to meet substantial compliance -- and I'll read our five
9 recommendations -- that PCCEP needs to retain at least
10 50 percent of its membership for a full year. It needs to
11 maintain at least two persons with lived experience of mental
12 illness on its group. It needs to provide staff support for --
13 with either professional or lived experience for those persons
14 with mental illness. It needs to create a comprehensive
15 governance for all of PCCEP, and it needs to invest in
16 community organizers, which we join AMAC in the call for, to
17 engage people with mental illness and addiction, which we
18 certainly differentiate those as two different communities who
19 would need a different type of engagement and different kind of
20 organizer to speak to.

21 THE COURT: And I note just for -- I think the
22 parties already know this, but just to be clear, I mean, you're
23 identifying those five specific recommendations that appear on
24 page 7 of your filing, which is Docket 217.

25 MR. CHAVEZ: Yes. Thank you, Your Honor.

1 We, as well, provided recommendations regarding community
2 engagement, including attendance requirements for PPB officers,
3 as well as leadership, and requiring some type of public and
4 timely response to PCCEP proposals so the public can know
5 what's the work of PCCEP and what's -- what is the City working
6 on and taking seriously.

7 And of a similar ilk, that was our comment regarding
8 BHUAC, as you might recall from the previous status hearing, we
9 think BHUAC is doing fine work. We also think the public
10 should be aware of the work they're doing. We think the public
11 should have input on the work that they're doing in that PPB
12 would benefit from that type of community engagement.

13 Now, the other section that won't be spoken to -- or
14 perhaps won't be spoken to by public testimony is -- we bill it
15 as the Unity issue, but, fundamentally, it's the Community
16 Mental Health portion of the settlement agreement, and we do
17 think, after conversations with representatives from Unity,
18 that the Court would benefit from hearing from them, and there
19 might be some willingness from them to provide that kind of
20 testimony.

21 As well, the amici can provide subject matter experts who
22 can inform the Court about issues regarding mental health
23 delivery services, delivery of services, and, as well,
24 obviously, the parties should be able to provide some
25 commentary regarding that as well as the public.

1 And if it's okay with Your Honor, I would then remit the
2 remaining -- remainder of my time to Mr. Hopcroft whenever he's
3 going to testify.

4 THE COURT: Very good.

5 And, Mr. Hopcroft, do you want to speak now or later? I
6 don't recognize you. Oh, there you are, sir.

7 MR. HOPCROFT: I'll speak now.

8 THE COURT: Would you like to speak now?

9 MR. CHAVEZ: He'll speak now.

10 THE COURT: Very good. Come on up.

11 Mr. Chavez, you might want to give him your chair and your
12 microphone.

13 MR. CHAVEZ: Yes.

14 THE COURT: Good morning, sir. And if you could just
15 identify yourself and spell your last name, please.

16 One second. Thank you.

17 All right. Go ahead, sir. Your name, sir.

18 MR. HOPCROFT: Michael Patrick Hopcroft.

19 THE COURT: And spell your last name, sir.

20 MR. HOPCROFT: H-o-p-c-r-o-o-f-t.

21 THE COURT: Please.

22 MR. HOPCROFT: I'm a board member of the Mental
23 Health Association of Portland, which is a member of the Mental
24 Health Alliance.

25 I'm going to speak in response to the claim of success of

1 this settlement agreement.

2 All we asked was that you not kill us.

3 In 2019 the Portland Police Bureau killed five people.
4 All people in mental health crisis. At the same time in
5 New York City, with ten times population, police killed 10
6 people. According to *The Washington Post* Fatal Force database,
7 none were in a mental health crisis.

8 To bring attention to excessive use of force by Portland
9 Police, Mental Health Association of Portland highlighted a
10 single case of use of force to explain the complexity and lack
11 of regulation.

12 In October 2006 James Chasse was brutally killed by three
13 Portland police officers, and the organization used advocacy
14 tools to raise awareness about his life and death and the
15 inability of the Portland Police Bureau or City of Portland to
16 hold individual officers accountable for actions which are
17 abhorrent to community values. This advocacy included public
18 testimony and private meetings with city, county, and police
19 leadership, extensive education of journalists and thought
20 leaders, collaboration with racial justice and police
21 accountability advocates, organizing a memorial and various
22 community meetings, educating community mental health leaders,
23 and making an award-winning documentary film in 2014.

24 The organization focused on police use of force as a
25 durable indicator -- a canary in a coalmine -- of a dangerous

1 multi-jurisdictional service system for people with mental
2 illness. The hypothesis was as acuity -- the number of persons
3 with acute or actively symptomatic severe or persistent mental
4 illness engaging in public services -- increases or decreases,
5 police use of force would also increase or decrease. Because
6 the use-of-force data was not collected and not made available
7 to the public, because the PPB had no internal process to
8 review the use of force and no external oversight agency had
9 access to data, the organization could only track the lethal
10 use of force.

11 In the duration for 2012 to 2019, there were overall
12 reductions in services available to people with severe and
13 persistent mental illness in the Portland area, and this
14 increased acuity. This affected people of all races and
15 economic classes. Inpatient treatment, both public and
16 private, were reduced. Outpatient services became largely
17 reliant on medication with services such as individual therapy,
18 group therapy, case management, and crisis intervention
19 becoming less available.

20 Medicaid payments did not match inflation or healthcare
21 costs. Peer-based services under-managed by the state and
22 under-utilized by service providers. The availability and
23 potency of legal and illegal drugs increased, including very
24 potent forms of marijuana, legal kratom, and inexpensive
25 methamphetamine. There is more alcohol and lower prices for

1 more businesses than ever before. Prevention and treatment
2 services for addiction and alcoholism were reduced, placing
3 Oregon in the top ten states for addiction and last for access
4 to addiction services.

5 Equally, services for people with mental illness in Oregon
6 counties reduced, forcing people requiring services to migrate
7 to Portland. All these factors increased security.

8 Because even fewer treatment resources are available for
9 persons of color, use of force against persons of color are
10 higher than against white people. This is all outrageous and
11 unacceptable.

12 Then in 2014 the U.S. Department of Justice issued their
13 surprising findings statement, which resulted in this
14 settlement agreement, which in part requires the PPB to collect
15 and express data about the use of force against people with
16 mental illness. That data, beginning in the third quarter of
17 2015, is available online.

18 The reported data has many problems to reduce its
19 usefulness, both as a mechanism of transparency and accounting
20 of activity.

21 First, the data is entirely collected by the police
22 officers themselves, meaning they're required to both enforce
23 their own behavior and report their own violations.

24 Second, the data is not available in a raw form. What we
25 have is the work of several Portland Police Bureau data

1 analysts. Access to the raw data for outside analysis is
2 necessary for any independent or critical review of police use
3 of force and prevents different conclusions from being made.
4 There is a link to the raw data online at present, but it does
5 not work.

6 Third, there are three case -- categories of cases we
7 examined in our evaluation of these reports. Mental health
8 crisis, drug and alcohol, and transient, which presumably means
9 those perceived to be homeless at the time. These categories
10 are not mutually exclusive, yet the data available to us does
11 not indicate which incidents involve the person in multiple
12 categories. It is likely, given the realities of homelessness,
13 addiction, and mental illness, that incidents will involve
14 single subjects that fit into two or all three of these
15 categories. With -- without knowing about these combinations,
16 the data becomes less clear and less reliable.

17 Fourth, how the data has been collected has changed over
18 the duration of collection.

19 First, use-of-force data collection began in 2012 after
20 the initial intervention by the U.S. Department of Justice.

21 Secondly, the use-of-force data reports began to be posted
22 online in the second quarter of 2015.

23 In 2016 the Portland Police Bureau made a change to data
24 collection and began using a mental health mask to prompt
25 officers to include information about mental illness. This

1 affected the data so prior data should be calibrated to match
2 the new method. It's unknown or unclear if this were done.
3 The effect in the illustrations attached to my testimony is
4 substantial.

5 Fourthly, more types of force began to be collected in the
6 second quarter of 2017, resulting in an increase in incident
7 numbers that may or may not reflect changes in police action
8 but obscures the frequency of force being used over time. This
9 makes it also difficult to directly compare results in 2019 to
10 results when online reporting began in 2015.

11 Fifth, the data does not quantify -- qualify incidents of
12 use of force. Obviously, some instances of use of force may be
13 justified and some may not. Because the Portland Police Bureau
14 does not routinely release an internal administrative review of
15 instances of use of force, the only qualification metric the
16 public can access comes from the district attorney's release of
17 investigations prior to the decision to not file charges in
18 cases of lethal use of force.

19 The lethal use of force are a small percentage of use of
20 force and likely not representative of the whole. The DA's
21 decision is a metric of crime, not policy, and since the
22 criteria for a criminal conviction of a police officer for use
23 of force in Oregon law is so high, no officer has been
24 prosecuted for lethal use of force in Multnomah County since
25 1969.

1 Sixth, we note from the public record and discussion with
2 surviving family members that all cases of lethal use of force
3 by members of the Portland Police Bureau since the settlement
4 agreement have been against people in some sort of mental
5 health crisis. The term "mental health crisis" has grown over
6 the years -- past few years to be inclusive of persons with
7 severe and persistent mental illness, as well as persons
8 acutely affected by drugs or alcohol.

9 Seventh, the Portland Police Bureau has recently again
10 upgraded the online dashboard which might be used to segment
11 use-of-force data. We visited this website several times over
12 several months using different computers and different
13 browsers, each with the same result -- the dashboard does not
14 work. The illustrations included in my testimony come from the
15 quarterly force data reports posted by the Portland Police
16 Bureau and available online.

17 As we see in illustrations one, two, and three attached to
18 the report, use of force against the three categories of
19 persons has, while fluctuating wildly, not decreased
20 consistently over the reporting period. The data does not
21 adequately explain the fluctuations. Note also that these
22 illustrations do not show deadly force per se, as that data is
23 not included in the data sources.

24 In conclusion, the data produced by the police bureau is
25 insufficient to claim a reduction in use of force against

1 people with mental illness, in a crisis with alcohol or drugs,
2 or who are categorized as transient.

3 We have attached references and direct illustrations to
4 the written portion of my testimony, which I'm happy to share
5 with the Court.

6 And I thank you, Your Honor, for your time.

7 THE COURT: Thank you, Mr. Hopcroft.

8 And we will take, sir, any written testimony that you wish
9 to submit. And give it to my courtroom deputy. She'll come
10 and retrieve it from you.

11 MR. HOPCROFT: Thank you, Your Honor.

12 Thank you, Mr. Hopcroft.

13 Mr. Chavez, is there anyone else from the Mental Health
14 Alliance that you would like to invite to speak or anything --
15 any further comments from you at this time?

16 MR. CHAVEZ: Only that Mr. Hopcroft's testimony is
17 also available as Exhibit 2 to the declaration that we
18 submitted and that we acknowledge and based part of our
19 briefing, again, on the feedback we received from members of
20 the SPMI, the Subcommittee for People with Mental Illness,
21 under PCCEP.

22 So we do just ask that the Court consider their testimony.

23 THE COURT: I have, and I've read it.

24 I will tell you in addition to the AM -- the Mental Health
25 Alliance's report, Docket 217, I have received and read the

1 declaration of Dr. Mark Leymon, Docket 219. Your declaration,
2 Mr. Chavez, at Docket 218, along with its various exhibits,
3 Exhibit 1, which is basically the list of PCCEP member
4 attritions. It's pretty serious looking. Your Exhibit 2,
5 which is basically the submission of Dr. Walker and Dr. Eisen.
6 I have read Exhibit 3, which is the written version of
7 Mr. Hopcroft's testimony, and then the related illustrations
8 related to exhibits attached to that. So I have received all
9 of that and read it.

10 MR. CHAVEZ: Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Chavez.

12 Ms. Alibies, would The AMA Coalition like to go now or
13 later? Your choice.

14 MS. ALBIES: We'll go now, Your Honor.

15 THE COURT: Very good.

16 MS. ALBIES: We'll be hearing from Dr. Haynes first.

17 THE COURT: Welcome, Dr. Haynes.

18 DR. HAYNES: May I stay seated?

19 THE COURT: Of course, absolutely.

20 DR. HAYNES: Thank you, sir, so very much.

21 I'm going to be focusing on qualitative emphasis and a few
22 quantitative, and then Dr. T. Allen Bethel will focus on more
23 quantitative.

24 To The Honorable Judge Michael H. Simon, the distinguished
25 parties of this settlement agreement between the City of

1 Portland and the U.S. Department of Justice,
2 Honorable Judge Simon, on September the 13, 2012, the U.S.
3 Department of Justice issued its letter of finding after
4 conducting an audit of the patterns and practices of the
5 Portland Police Bureau stating and quoting from the document
6 that patterns and practices of the excessive force is used
7 against people with mental illness or perceived to be mentally
8 ill.

9 In November 2012 the City Council passed an amended
10 settlement agreement.

11 In January 2013 this Court added the Portland Police
12 Association to be a part of the lawsuit filed by the Department
13 of Justice, and they, the Albina Ministerial Alliance
14 Coalition, the status of enhanced-amicus curiae.

15 In July 2013 Portland City Council accepted The AMA
16 Coalition collaborative agreement outlining the AMA
17 participation in the settlement agreement.

18 Honorable Judge Simon, I submit to you today that we have
19 come a long way, but we still have a long way to go. We have
20 made some substantial quantitative progress since 2013, but we
21 are far from achieving the intent of the settlement agreement
22 stated in the preamble of the settlement agreement, and I would
23 like to quote from that preamble and reference to the
24 qualitative.

25 The parties further recognize that the ability of police

1 emphasis to protect themselves and the community that this --
2 is largely independent on the relationship they have with the
3 community public and officer safety. Constitutional policing
4 and community trust in the police force are thus
5 interdependent.

6 Furthermore, it states that to fully achieve these goals,
7 this agreement required that the City and PPB further revise
8 when needed, adopt new policies, training, supervision, and
9 practices in the following areas: The use-of-force training,
10 community-based mental health service, crisis intervention,
11 employee information system, officers' accountability, and
12 community engagement.

13 This agreement further required that the City and Portland
14 Police Bureau put in place a more effective system of oversight
15 and self-correction that will identify and correct problems
16 before they develop.

17 We acknowledge substantial progressive growth and
18 development of the PCCEP in key areas, but there is still a
19 great need for stability and keeping tenure in the members of
20 the board and creating a more efficient recruitment, training,
21 and rotation of new board members.

22 Furthermore, it needs improvement and engagement,
23 community participation, due to use of a
24 designated/undesignated community staff organizer.

25 Now, I have been an organizer, sir, for 40 years in the

1 civil rights movement. I can say, very clearly, on the base of
2 traditional community organizing and experience on community
3 or -- what PCCEP does is not community organizing. We
4 acknowledge the substantial increase in development. In the
5 area of independent police review, there's a great need to make
6 it stronger and center on serving the community.

7 We need, sir, a 21st century community policing plan that
8 is based upon the proposition that you cannot arrest your way
9 out of crime, that you cannot solve problems in the community
10 without community trust. It was in 2019 *The Oregonian* reported
11 a poll that was taken throughout the city, in particular with
12 community of colors, and found that there still is an
13 overwhelming high number of community of colors that do not
14 have trust in the Portland Police Bureau.

15 A trusted police force is essential to getting people in
16 their community participating. There cannot be a confidence in
17 the police bureau until this issue of mistrust begins to be
18 irradiated chip by chip.

19 Now, in some areas of PCCEP, it has real committed,
20 dedicated members, and I'm deeply honored to know many of them,
21 and they're very knowledgeable members.

22 At the same time, stability is critically important.
23 AMA's participation of training -- and we'll continue to
24 participate in the training, but community trust of police is a
25 major qualitative issue.

1 The quantitative issue, we need a decrease in police
2 violence. We need to improve the perception of police, and we
3 need, also, sir, the big jaunt and -- and the big elephant in
4 this of how we relate to the mentally ill.

5 We have been questioning for some time, back in the other
6 hearings we had, on the issues of de-escalation. We have great
7 training and continuously improve in training. The job and
8 policies our directors have continued to move, but when it
9 comes to taking those policies and training and putting it into
10 the practice has a big gap, that is this and de-escalation.
11 And it has to get beyond the command staff. It has to get down
12 where sergeants and corporals and others are holding officers
13 accountable when they do not follow the policy and the training
14 of the Bureau.

15 Thank you so very much, sir.

16 THE COURT: Thank you, Dr. Haynes. I appreciate
17 that.

18 Ms. Albies, is there anyone else from The AMA Coalition
19 that would like to speak?

20 MS. ALBIES: Yes, Your Honor. Dr. Bethel.

21 THE COURT: Good morning, Dr. Bethel.

22 We can get a microphone for you.

23 Mary, do you want to get Dr. Bethel a handheld --

24 MR. WOLFE: Your Honor, I was wondering if I could
25 also add priority to be able to speak. I'm using interpreters.

1 THE COURT: And your name, please?

2 MR. WOLFE: Philip Wolfe.

3 THE COURT: All right. We'll hear from Philip Wolfe
4 after the AMA.

5 MR. WOLFE: Thank you, Your Honor.

6 DR. BETHEL: Good morning, Judge Simon. And thank
7 you for the opportunity to be able to share a few moments. I'm
8 Dr. T. Allen Bethel. I serve as the president of the Albina
9 Ministerial Alliance and co-chair of the Albina Ministerial
10 Alliance Coalition. Good morning to all of you.

11 I want to address just a few issues. I will not try to
12 reiterate those things we have already submitted in writing,
13 but in addressing some of the issues that we're talking about
14 when we talk about qualitative measures and the request of the
15 judge this morning, what should be some of those things we
16 should be looking at that brings up concerns as to why
17 particularly this part of the PCCEP is not in full compliance.

18 Number one, I can start with saying that if we're going to
19 talk about being in substantial compliance, one of the things
20 that we must notice, we must talk about sustainability. And
21 PCCEP has not been able to sustain itself. We have
22 continuously, during these last six months, seen members
23 falling off of PCCEP and the need to try to bring more members
24 on and to train more members to be able to fill those vacated
25 seats.

1 At this time PCCEP is not operating in full compliance
2 with the number of members needed to carry PCCEP forward and
3 trying to, at this point, to find more members to be trained
4 and put on PCCEP in order to create sustainability.

5 If PCCEP has not been able to sustain itself, and it has
6 not in these last six months, how is it going to do it for one
7 year to be completely in compliance? We need to work on that
8 and bring about some transparency as to how we're going to
9 continue to make that happen.

10 The other part that we need to look at is that -- and the
11 whole need of needing -- I'm searching for my words now.
12 Pardon me, Your Honor, for taking this momentarily lapse of
13 thought.

14 THE COURT: Take all the time --

15 DR. BETHEL: As we have looked and seen that the
16 number has not been reduced when dealing with persons of mental
17 health crises of the use of force, the use of force continues
18 to rise. We're seeing not a reduction of persons being harmed
19 or life being lost because of use of force by the Portland
20 Police Bureau, but it seems to be increasing, and we need to
21 find ways in which we are going to bring about a reduction in
22 the use of force between those persons of color, those who were
23 in mental health crises, if we're going to say -- we're
24 reaching full or some type of substantial compliance in terms
25 of dealing with this issue of mental health issues.

1 What we really need to do, and though we will
2 admonition -- not admonish -- we will acknowledge that we have
3 made strides. We have made some progress, but we still have
4 this "us versus them" mentality that is still continuing, and
5 we need to move away from that and come together in a direction
6 or collaboration for successful community engagement.

7 We're not going to get that with each party still holding
8 "This is mine; this is yours. This is us; this is you," and
9 those types of statements or actions.

10 We have got to come together and work together in a full
11 collaboration of coming together and saying, "Here is what
12 we're going to do to make this sustainable for both the City,
13 for those who are being involved, as well as for the Department
14 of Justice -- Department of Justice."

15 We need the community organizing person. I cannot fail to
16 underscore that more. We need that organizing person.
17 Regardless of how one views it, we need an organizer or
18 organizers to do that.

19 We also need a facilitator, not just someone who is liked
20 by everyone, but someone who's going to be and help hold PCCEP
21 and the City and all parties accountable for those things that
22 the agreements have been put forth for PCCEP. We need someone
23 that's going to look back at PCCEP and say, "Here is point
24 number one of what we agreed to do. How are we going to get
25 that done? What are the steps we're going to do and what are

1 going to be the metrices for coming back and evaluating it has
2 been done and not just leaving it just to be talked about?"

3 One of those agreements that we have set forth in the
4 settlement agreement, those collaborative agreements that were
5 agreed upon, who is watching those? Who is going to make them
6 work? It's not going to be an internal -- a person from the
7 Portland Police Bureau. Because if the internal person from
8 the Portland Police Bureau was able to do this, why have we
9 spent the last five-plus years here? I know why we're here,
10 but we need to change that so that we can move forward.

11 Stability must be looked at. The drop-in center for
12 persons being able to be dropped off so that they can receive
13 the help that they need when they're in the middle of a crisis
14 and not face a gun, not face escalated power of force, must be
15 looked at if PCCEP is going to work and the agreement is coming
16 to full compliance.

17 I must agree and must state that we must move forward.
18 We're not in full compliance or substantial compliance at this
19 point, and we do need another six months to a year to look at
20 that. But I would hope that we can put in place some
21 agreements as to what we will say full compliance or
22 substantial compliance is and agree on those. And once we
23 reach those things, then I think we all would come out and say
24 we're moving in the right direction.

25 Thank you, Judge. I thank the Court.

1 THE COURT: Thank you very much, Dr. Bethel. I
2 appreciate hearing from you and those ideas.

3 Ms. Albies?

4 MS. ALBIES: Yes, Your Honor. I just want to make
5 one additional point and that is that throughout this process
6 the -- first the Community Oversight Advisory Board, the COAB,
7 and now the PCCEP, was intended to be something that outlasts
8 the settlement agreement. And so this goes back to the
9 question of the stability and durability of the PCCEP plan, and
10 that is why it's critical that this be set up in a way that is
11 effective and that will outlast this agreement. And until we
12 see that durability and the feasibility of PCCEP outlasting the
13 settlement agreement, especially because it's my understanding,
14 based on conversations with both the City and the Department of
15 Justice, that PCCEP will be part of this ongoing monitoring of
16 whether these -- the implement -- the implementation of the
17 settlement agreement after it's over is still ongoing and the
18 purposes are met, and so that's an additional reason why it's
19 important.

20 Let me follow up on that and -- go ahead, Doctor. Did you
21 want to say something else?

22 DR. BETHEL: No. Go ahead. No, I'm done.

23 THE COURT: I wanted to follow up on something that
24 Dr. Bethel said and go back to something Dr. Haynes said. One
25 of the things that Dr. Bethel just said and what Ms. Albies

1 also just alluded to is it might be helpful for the parties --
2 that would mean the United States, the City of Portland, the
3 amici, the AMA Coalition, the Mental Health Association, the
4 Portland Police Association -- to confer and to see if you can
5 come up with an additional agreement of what substantial
6 compliance would look like if I were to conclude that there's
7 not substantial compliance right now, and then we could have a
8 metric perhaps, and I understand that the AMA's comments talk
9 about both quantitative issues and qualitative issues. There
10 may not be a metric for the qualitative issues, but there may
11 be for the quantitative issues so we can see if there's going
12 to be a metric or set of metrics that can indicate what
13 substantial compliance looks like so we can all know when we
14 have achieved it and then we can have the beginning of our
15 one-year countdown, to assuming we continue to achieve it, then
16 the litigation can come to an end. The PCCEP will continue in
17 the role that is envisioned under the settlement agreement
18 under the proposed amendment. And I think rather than trying
19 to put pressure on folks right now to answer that question, it
20 might be appropriate after the hearing for the now five parties
21 to this matter to confer and see if you can come up with an
22 agreement on that.

23 That's just one response that I had to what Dr. Bethel and
24 Ms. Alibies just said.

25 I also want to go back to a point of what Dr. Haynes just

1 said.

2 Dr. Haynes, you stated in the beginning of your comments,
3 that we have come a long way, but we have, still, a long way to
4 go.

5 I do want to recognize both pieces, especially the first,
6 to begin right now. I do recognize -- first of all, I commend
7 the United States Department of Justice and the U.S. Attorney's
8 Office for the District of Oregon for bringing this lawsuit
9 Under Title 42 of the United States Code § 14141. I think it
10 was a very valuable addition and contribution that the United
11 States Department of Justice has made to helping make things
12 better in the City of Portland. I do recognize and commend the
13 U.S. Department of Justice and the U.S. Attorney's Office for
14 bringing this lawsuit and continuing with your efforts.

15 I also recognize and commend the City of Portland.
16 Because this lawsuit, when it was brought, wasn't brought to be
17 immediately followed by a vigorous fight, as I sometimes see in
18 this courtroom in other cases, but the City of Portland
19 recognized that it had a problem. It recognized the pathway to
20 a solution. Some may be a little bit more -- some of the
21 pathway might have a few detours in it, but I think that the
22 City of Portland gets an awful lot of credit for very promptly
23 reaching a settlement agreement of this dispute and making
24 serious efforts to try to make things better.

25 I also very much appreciate the contributions of the

1 Portland Police Association, as an intervenor here, and of
2 course the longtime contributions of the AMA Coalition as a
3 friend of the Court, *amicus curiae*, and the more recent
4 contributions of the Mental Health Alliance as the *amicus*
5 *curiae* here.

6 And I agree with Dr. Haynes that we have come a long way.
7 Things are moving in a very positive direction. That is
8 partially evidenced by the fact that with a 10-plus section
9 agreement there really is only a dispute now about whether or
10 not there's substantial compliance with one of the sections.
11 We have substantial compliance with about 90 percent of the
12 agreement. But this last piece, which is, as Dr. Bethel
13 pointed out, intended to remain when this litigation concludes,
14 is a very, very important piece. And so to that extent, I echo
15 Dr. Haynes' concerns, without making any factual findings at
16 this time, but I agree with the sentiment we still have a ways
17 to go.

18 How we get there and what we do and how -- what's the
19 right path to take to get there, I look forward to more
20 comments from the parties and from the public.

21 Dr. Bethel, was there something else that you wanted to
22 say, or Ms. Albies?

23 DR. BETHEL: No, I'm done.

24 THE COURT: Anyone else from the AMA at this time?

25 MS. ALBIES: No, Your Honor.

1 THE COURT: All right. We will be taking a
2 mid-morning recess in a little bit, but I do now want to
3 recognize -- and this may be a good segue -- going back to one
4 of the paths that may not have worked out as well, the COAB,
5 the Community Oversight Advisory Board. I would welcome any
6 public comments from Philip Wolfe about where we are and where
7 we should be going.

8 Philip Wolfe.

9 It's probably most important to get our interpreter to
10 have -- the interpreter to the microphone or whoever is going
11 to be using it.

12 MR. WOLFE: Hello. My name is Philip J. Wolfe,
13 Your Honor. Thank you for giving me the opportunity to speak
14 here today. And it's good to see you again. Thank you.

15 And I know you mean well, but I do want to emphasize that
16 for anybody in here in this room today who believes that things
17 are getting better and will get better, that's -- they're being
18 naive. First, to review just some history, in 2014 the
19 Department of Justice sued the City of Portland because they
20 saw what was happening to people in the mental health community
21 and the deaths that were happening, and instead of the City
22 taking accountability in that lawsuit, they negotiated the
23 settlement. And from that settlement, we have COAB, the
24 Community Oversight Action Board, and that has been in
25 existence since then.

1 And the Department of Justice has destroyed COAB. It has
2 fallen apart. I was the chair of COAB. Before the deadline,
3 before the last deadline, as we were negotiating with
4 Ted Wheeler, our mayor here, and we were asking -- pleading for
5 more time to do our work because we felt like we were just
6 getting on our feet and just finally getting to the point where
7 we could do anything with community involvement, and they said,
8 no, they wanted an end to COAB.

9 And so PCCEP was put in place, and I have been involved
10 with PCCEP, going to those meetings and watching it, over the
11 last year. And I wanted to tell you right now that PCCEP is
12 still just in its infancy. Even though we're at the one-year
13 mark, it's still in its infancy in what it can do.

14 And, again, the appointments were made by Ted Wheeler,
15 meaning it wasn't an independent process.

16 So from 2010 until today, 20 people have been killed by
17 Portland police officers. Last year there were five people
18 killed by Portland police officers, all who had mental health
19 conditions and who were suffering from those conditions.

20 52 percent of arrests are of people who are homeless, and
21 there's a connection between homelessness and mental health
22 issues. And the police are targeting this population, this
23 vulnerable population. And that's still a huge concern, and
24 it's obviously not getting better, which means PCCEP is
25 failing.

1 In going to the meeting, the PCCEP meetings for the last
2 year, I've seen the attrition and how the meetings get smaller
3 and smaller. And it's just City people at this point.

4 Community members number? Maybe one or two, and that's
5 it, because there's no trust. That's been -- the trust is gone
6 because of what the -- the Portland police are doing with --
7 against the citizens to this point.

8 So as I wrap up, in my view, police reform is something
9 that still needs to continue to happen. We haven't arrived.
10 We'll have this conversation for the next 40 years. And so how
11 can the City take responsibility for this? It's time for them
12 to recognize that what has been happening isn't working and the
13 end of policing.

14 It's time to change that frame. The way that policing is
15 done. And the way that we've thought about this, with hopes
16 and dreams that things can do -- but we've been going and going
17 going and arguing and negotiating and coming to these meetings
18 and these hearings and how much tax money has been spent on
19 this whole effort in these last years to -- for reform, and
20 it's not happening. It's not about us versus them. That's not
21 what I'm saying. It's that we're scared of the police, and we
22 don't trust the police. We don't want to be anywhere near
23 police officers.

24 So, you know, how do you resolve something like that? We
25 can keep running PCCEP for PR purposes. We can have nice

1 photos in *The Oregonian* of everybody there, but that's the
2 people who are there and not the people who are scared to come
3 and scared of the police. The community is not showing up.

4 So, I mean, there's -- there is no community engagement at
5 all, and so my recommendation, Judge Simon, Your Honor, is that
6 I would appreciate it if you continue to retain oversight and
7 recognize that PCCEP is no longer functioning and running.
8 It's time to consider something else, some other change, and
9 it's time for PCCEP to just go away because it's been a waste
10 of our time, a waste of our tax money, the waste of people who
11 are going, their effort.

12 So I don't know if there's -- what drawbacks you're
13 seeing, but just as -- in my experience, as I've seen this
14 issue going for these last several years, it's not working. So
15 I just ask that you realize -- recognize that it's not
16 functioning; that it is dysfunctional.

17 THE COURT: Mr. Wolfe, let me ask you a question, if
18 I may.

19 MR. WOLFE: Yes, Your Honor.

20 THE COURT: I appreciate you being here and I
21 appreciate your comments and your insight and all the work that
22 you've previously done -- COAB, the work that you were doing
23 with PCCEP -- and here is my question: I'll preface it by
24 saying my -- my understanding is that the City of Portland
25 would like to be out from under continual court supervision,

1 and that is not going to happen in -- under the agreement until
2 we have 12 months of substantial compliance. I accept what
3 you're saying, but when you say that there has to be some other
4 change, when you say COAB didn't work -- although I understand
5 you're saying it wasn't given enough time. I hear what you're
6 saying about PCCEP. Can you give me some more specifics of
7 what constructively would be that other change? What should
8 the parties to this litigation consider doing?

9 MR. WOLFE: Sure, Your Honor. I'm happy to answer
10 that question. It's a very important question. Thank you for
11 asking.

12 Well, I have a few ideas. First of all, hold the City
13 accountable. Have the City pay for its -- this lawsuit, the --
14 the DOJ has brought. Have them be -- make them financially
15 responsible. I think that would be what I would say first.

16 And then, number two, have a real truly independent
17 oversight committee, an independent COAB, that can breathe life
18 into this process, because that is where -- I still have hope
19 in something like COAB and not something like PCCEP. So that's
20 what I would say.

21 THE COURT: Thank you very much, Mr. Wolfe. Thank
22 you.

23 Jill, are you doing okay? Can we take a few more?

24 THE COURT REPORTER: Yes, I'm fine.

25 THE COURT: We can turn back to some of the issues

1 that the Mental Health Alliance was talking about, including
2 the issues relating to the subcommittee for people with mental
3 health.

4 Ms. Marshall, are you here? Amanda Marshall?

5 MS. MARSHALL: Thank you, Your Honor. The three of
6 us would like to address the Court as a group.

7 THE COURT: Very good.

8 MS. MARSHALL: Our testimony plays off of each other.

9 THE COURT: Very good. Come on up and just identify
10 who will be speaking.

11 MR. NOLEN: Sorry. I'm a bit nervous.

12 THE COURT: Identify your name first, please.

13 MR. NOLEN: My name is Patrick Nolen.

14 THE COURT: And please spell your last name.

15 MR. NOLEN: N-o-l-e-n.

16 THE COURT: Thank you. Welcome, Mr. Nolen.

17 MR. NOLEN: My name is Patrick Nolen. I'm a person
18 with lived experience of homelessness and mental illness. I
19 recently resigned from Portland Committee on Community-Engaged
20 Policing and as the co-chair of the PCCEP Subcommittee for
21 People with Mental Illness.

22 Since 2018 I have spent the majority of days attending
23 meetings, in trainings and discussions, reading, responding to
24 emails and telephone calls, speaking with friends and
25 colleagues about how Portland's police can reduce its use of

1 force against people with mental illness on behalf of the PCCEP
2 and the subcommittee. That time and effort has been -- has not
3 been fruitful. I would like to tell you why.

4 One criticism of COAB was that the members did not receive
5 training. PCCEP members had little or no experience addressing
6 issues of police conductiveness and accountability. The City
7 hired two separate training organizations for PCCEP, which
8 arranged for four days of startup training -- sorry. I'm --
9 I'm -- this is the first time I've spoken in --

10 THE COURT: You're doing just fine.

11 MR. NOLEN: Okay.

12 THE COURT: Speaking in public is one of the scariest
13 things people can do, but you're doing just fine.

14 MR. NOLEN: Okay. Great.

15 THE COURT: Would you like a cup of water?

16 MR. NOLEN: No, thank you.

17 Some of the content was about police issues, but much of
18 the training concern was PCCEP members getting to know each
19 other better. We made art collages and watched a dance
20 performance and read poetry. There was no training on such --
21 as such, focused on mental illness.

22 A disagreement with a PCCEP trainer that -- about
23 scheduling led to an allegation of racism against me, which I
24 feel is not resolved. I asked for help from the City to
25 resolve this conflict. I was -- it was decided that PCCEP

1 would have a one-day retreat about the accusation of racism
2 against me. The facilitator of that retreat spoke to all the
3 members of the PCCEP except for me.

4 During the retreat, the accusation of racism was repeated
5 by other PCCEP members. For me, this issue was not resolved.
6 Disagreements and delays in the PCCEP meetings were constant.
7 There was no education or training about facilitation. The
8 solution provided by staff was that the PCCEP would have
9 additional private meetings. There was no call -- these were
10 called retreats to discuss how we could get along better.

11 There were two additional retreats of PCCEP to improve the
12 relationship between members of the PCCEP in relation to race
13 and other things. For me, there continues to be a lack of
14 trust in the group stemming from the lack of resolution about
15 the initial accusation against me.

16 I wanted to form a PCCEP subcommittee, which would look at
17 how the police could reduce use of force against people with
18 mental illnesses. I wrote a proposal and brought it to that
19 first general meeting of the PCCEP. That was the beginning of
20 a several-month struggle to get the Subcommittee of People with
21 Mental Illness chartered by the PCCEP. It took presenting the
22 same basic proposal four different times over three months to
23 get that done.

24 The first full PCCEP meeting, I made an initial proposal
25 in that PCCEP would -- the PCCEP wouldn't vote yes or no. I

1 was advised that the concerns of people with mental illness
2 should be the subset of an outreach committee -- committee. An
3 outreach committee has never been formed.

4 I went to the Steering Committee. Members referred the
5 proposal back to the full committee. Reviewing the proposal,
6 an audience member testified that the proposal was -- as
7 written, was what we were looking for in a subcommittee.

8 Second, I went to another full -- another full PCCEP
9 meeting. Again, the PCCEP declined to vote on the proposal,
10 asking that it be rewritten. No specific directions as to how
11 it was rewritten was given.

12 The third full PCCEP meeting, the PCCEP voted to allow the
13 subcommittee. At that time, the first and only subcommittee
14 for the PCCEP.

15 Since then, the PCCEP has done no outreach to communities
16 with persons of -- with mental illnesses, addiction, or with --
17 who are homeless. Simply posting a social media message does
18 not qualify as outreach. Providing -- catering dinners for
19 PCCEP members is not outreach, and the results showed that.

20 PCCEP meetings are poorly attended. Subcommittee meetings
21 are poorly attended. But members of the subcommittee continue
22 to work. We met monthly, and then they asked for us to bring
23 recommendations to reduce use of force.

24 In October of 2009 the subcommittee presented its first
25 recommendation, which my co-chair, Amanda Marshall, will speak

1 about.

2 I was disheartened by the disinterest on the part of PCCEP
3 work of the Subcommittee for People with Mental Illness. Other
4 than a co-chair attending one meeting, the 15 or so members of
5 the committee did not attend any of the 12 meetings of the
6 SPMI.

7 I have attached a roster of the members and a list of
8 experts who spoke to us about reducing police use of force.

9 I felt that a constant fight to get the interest of people
10 with mental illness addiction and alcohol -- addiction,
11 alcoholism, and trauma to be considered to be -- by the use of
12 force by PCCEP. Those are persons routinely harmed by the
13 police, arrested, jailed, as -- as much or more so than any
14 other demographic group.

15 To be designated as a subset of a -- and not a subject,
16 set the PCCEP in the wrong direction. Thank you.

17 THE COURT: Thank you, Mr. Nolen. I also appreciate
18 your written comments to that effect, including the attachment.
19 So thank you very much.

20 Who will be speaking next?

21 MS. MATHIS: My name is Meredith Mathis.

22 THE COURT: And I also thank you in advance for your
23 written submission, which I have read, but I look forward to
24 anything else you may wish to say, or if you want to read it.

25 MS. MATHIS: Okay. My name is Meredith Mathis. I'm

1 currently a support staff member at Metropolitan Public
2 Defender, and I will be attending law school this fall. I was
3 invited to be a member of the Subcommittee for People with
4 Mental Illness, SPMI, a subcommittee of Portland's Committee
5 of -- on Community-Engaged Policing. I had spent the years
6 prior, following local issues of policing and mental illness,
7 and familiarizing myself with the DOJ lawsuit filed against the
8 City of Portland. I work professionally in a field where the
9 nexus between policing and mental illness is particularly
10 pronounced. I am also a consumer of mental health services in
11 Portland.

12 In my experience as a subcommittee member, PCCEP served as
13 a barrier to community engagement.

14 THE COURT: Ms. Mathis, I'll interrupt you for just a
15 moment. I know you're reading, and I appreciate that, and
16 that's totally fine, but please read a bit more slowly for the
17 benefit of our court reporter.

18 MS. MATHIS: Okay. SPMI co-chair, Amanda Marshall,
19 presented our first recommendation. She will describe the
20 frustrations involved with this in more detail, including the
21 inefficiency that required her to present the same
22 recommendation twice, ultimately to no effect.

23 Months later, I presented our second and third
24 recommendations to the committee. One of our recommendations
25 passed and the other had support from some sitting members of

1 PCCEP, but the meeting ran over three hours long, and I had to
2 wait almost three hours to present two recommendations as
3 quickly as I possibly could. I was encouraged by the chair of
4 the PCCEP to speed read.

5 Being forced to rush through a very time-sensitive
6 proposal, it dismissed the importance of the work as well as
7 the level of detail in the recommendation. The time and effort
8 SPMI put into this recommendation seemed unconsidered.

9 We all reviewed relevant items of the settlement agreement
10 independently and a group multiple times. We consulted with
11 and incorporated the work of Dr. Derald Walker and
12 Dr. Jeffrey Eisen with Cascadia Behavioral Health --
13 Healthcare.

14 We considered and shared reports made by DHHS and the
15 Oregon Health Authority about Unity Center for Behavioral
16 Health Deficiencies. We considered and shared many relevant
17 news articles and reports.

18 SPMI members discussed how deficiencies affect our
19 clients. We considered what we have witnessed and the nature
20 of what our clients have shared with us. We brought in as much
21 expertise and perspective as we could. We spent hours crafting
22 and editing our work.

23 Despite having sent the materials out to PCCEP members
24 prior to the COCL town hall, we had received no feedback from
25 PCCEP members by the time I presented, at which time multiple

1 members of the PCCEP abstained from voting due to a stated lack
2 of information.

3 We attempted to amplify many different forms of community
4 input with little support and no regard for our efforts. I was
5 left wondering if we were able to gather this much information
6 and volunteer the amount of hours we did and we were not
7 substantively responded to, how could community members with
8 less time or less access to comprehensive expertise be
9 considered?

10 Tracy Reeve, a city attorney, also waited, through this
11 very long disorganized meeting, to say that our third
12 recommendation, that the City help fund a developing walk-in
13 center, in line with item 89 of the settlement agreement, was
14 actually not the City's responsibility.

15 My perception was that some PCCEP members took for granted
16 who the city attorney speaks on behalf of and privileged her
17 very brief point over any engagement with the weeks of work the
18 subcommittee had put in prior to that night.

19 In the context of the lawsuit and the settlement
20 agreement, the City's interests are accounted for. They have
21 attorneys who are working in the best interest of their client.
22 The Portland police's interests are accounted for. They have
23 their union and attorneys who work in the best interest of
24 their client.

25 What PCCEP did not seem to understand is that the DOJ,

1 stepping in on behalf of the people of Portland, means that the
2 negotiated structure of the settlement agreement was meant to
3 account for the constituents of Portland who are not previously
4 being protected from unconstitutional policing. In order to
5 properly amplify community input, this basic understanding
6 would have needed to be reckoned with.

7 Instead, many PCCEP members ignored terms of the
8 settlement agreement and some tended to default to who they
9 perceived to have authority when issues related to the argument
10 or agreement came up. For example, the city attorney, the
11 police union, or the compliance officer.

12 This has not only failed to improve community
13 relationships between constituents and the Portland Police
14 Bureau, but this also generated a general distrust in the PCCEP
15 itself. As a member of the SPMI, I collaborated with fellow
16 members in the hopes that it would result in at least marginal
17 improvement in the lives of those experiencing mental illness
18 and beyond.

19 Ultimately, if somehow we could bring back all of the
20 lives lost due to police use of force last year or the year
21 prior or the year prior, situations where someone had a real or
22 perceived mental illness, someone likely experiencing crisis,
23 are the systemic conditions that led to their premature deaths
24 truly different now? Is there a system in place that would be
25 less likely to kill them now? Is the City of Portland honestly

1 on its way towards that level of change, and is it a priority?

2 I can't say, with confidence, that I believe any of that
3 to be presently true. I don't believe PCCEP served as a
4 community-led group that could collaborate with Portland
5 constituents to independently review the settlement agreement
6 and work towards that end, nor did they improve community
7 relations, integrate community input, or respect the
8 volunteered labor of all of those who attempted to contribute.
9 People who showed up to poorly publicized, disorganized,
10 three-hour-long PCCEP meetings were volunteering their time,
11 and this did not ultimately feel respected.

12 I left that PCCEP meeting, where I presented our second
13 and third recommendations, feeling disheartened that the labor
14 of SPMI and the time of the experts, professionals, and people
15 with lived experience who attended our meetings, meant little
16 to the PCCEP and to the larger project of evaluating the
17 Portland Police Bureau and the City of Portland's compliance
18 with the settlement agreement.

19 Thank you.

20 THE COURT: Thank you, Ms. Mathis.

21 Anyone else from the subcommittee?

22 MS. MARSHALL: Good morning, Your Honor. My name is
23 Amanda J. Marshall, and I'm a practicing attorney in the state
24 of Oregon. I'm not often in a position to address the federal
25 court, so thank you for that opportunity.

1 Today I address the Court as the co-chair of the
2 Subcommittee for People with Mental Illness under the PCCEP, as
3 a resident of Portland, where there have been too many tragic
4 encounters between the police and civilians with mental health
5 and addiction problems, and as a person who has struggled with
6 mental health issues and the legal system.

7 In early June 2019 I was invited to be a member of the
8 SPMI. I was excited to be considered for a subcommittee whose
9 members had connections with mental illness, both personally
10 and professionally. As I had only been in private practice for
11 three months, I had to make a difficult decision about how open
12 I wanted to be to the public in regard to my own mental health
13 struggles. Few lawyers disclose to the legal community that
14 they have ever struggled with mental illness.

15 I decided that the goal I set during recovery of using my
16 lived experience to help others navigate the mental health
17 system outweighed my fear of the impact my disclosure might
18 make on my business. With that, I joined SPMI, became a
19 co-chair of the subcommittee, formally presented SPMI's first
20 substantive recommendation to PCCEP, and observed the community
21 response to PCCEP's decision not to pass along that
22 recommendation.

23 SPMI made three formal recommendations to the PCCEP, which
24 have been provided to the Court.

25 PCCEP voted to accept recommendation number two, requiring

1 reassessment of compliance with Item 89 of the settlement
2 agreement, but voted against recommendations one and three. It
3 wasn't the final decisions of the PCCEP that had the greatest
4 impact but rather the process that left myself and other
5 members of SPMI feeling marginalized, misunderstood, and
6 ultimately dismissed.

7 Unfortunately, these feelings parallel the experience of
8 those with mental illness.

9 I presented SPMI's first recommendation regarding
10 condolences to the PCCEP both at the July 2019 meeting and then
11 again at the August 2019 meeting. In my presentation, I wanted
12 to convey the nuances we carefully wove into the language of
13 our recommendation to address every concern raised at our
14 meetings.

15 One of our subcommittee's biggest concerns, which did turn
16 out to be all too true, was that PCCEP would continue to table
17 the recommendation, taking no action, and dissipating the
18 forward momentum the recommendation had gained.

19 In July, due to poor time management by PCCEP, I was given
20 less than ten minutes to present the recommendation our
21 subcommittee had worked on for months. Members of PCCEP
22 expressed wanting to take more time to allow for a full airing
23 of our recommendation and decided to table the vote until the
24 next meeting.

25 In August, I again assured that my afternoon schedule was

1 free of client meetings and court appearances so that I could
2 present our recommendation on condolences for the second time.

3 PCCEP's agenda allotted an hour for our presentation,
4 PCCEP discussion, and public comment before a vote. It was
5 apparent that PCCEP did not use the time between our meetings
6 to consider our recommendation. PCCEP's discussion and the
7 response to our presentation and the community members' sharing
8 their deeply emotional experiences of loss of loved ones during
9 interactions with the police was insensitive, ill-informed, and
10 disrespectful.

11 At the PCCEP meeting, two member positions were vacant and
12 two members were not present to vote, leaving the total present
13 to vote at nine of the 13 member positions. All nine members
14 present expressed the support for the recommendation and, yet,
15 the recommendation did not pass. Two members abstained,
16 leaving the vote one short of passing. The only reasons given
17 for abstention were, one, the recommendation could be stronger,
18 meaning that they agreed with it; and, two, that the current
19 policy from the City and the Portland Police Association were
20 needed to see if the recommendation was even possible. No
21 further explanation was provided.

22 Starkly absent from the entire discussion was any attempt
23 by members of the PCCEP to determine what went into the
24 formation of the recommendation. We were not asked what
25 research we performed, who we consulted, what issues we

1 considered and addressed in the writing of the recommendation,
2 or why we felt so strongly about our exact language.

3 In forming our recommendation, SPMI consulted with the
4 community, discussed the recommendation at multiple meetings,
5 circulated numerous drafts of the recommendation with
6 invitations to edit among its members, invited public comment,
7 and reached the final version forwarded to the PCCEP with
8 unanimous support.

9 The questions raised at the PCCEP meeting had been heard,
10 considered, and addressed in SPMI meetings and discussions. As
11 Mr. Nolen stated earlier, PCCEP members rarely came to our
12 meetings.

13 Subcommittee members left the August PCCEP meeting feeling
14 shut out by the forum that is supposed to be about raising the
15 concerns of the community to city leaders. On September 3,
16 2019, I sent a letter composed by the members of SPMI to the
17 PCCEP, withdrawing our recommendation from their consideration.
18 We asked for a clearly defined process before making additional
19 recommendations.

20 Simultaneously, SPMI sent a cover letter and our
21 recommendation directly to Mayor Ted Wheeler and then to
22 Chief Danielle Outlaw. Both letters have been provided to the
23 Court. I received several emails from members of the PCCEP
24 with words of support and encouragement.

25 SPMI made repeated requests to PCCEP to formulate

1 processes, not only for recommendations, but for governance
2 addressing operations of the subcommittee.

3 In response, PCCEP eventually proposed a template for
4 recommendations from subcommittees that contained a prompt
5 addressing how the recommendation redressed barriers to racial
6 equity but contained no solid inquiry, nor any inquiry
7 whatsoever about mental health.

8 In response to our request for governance surrounding
9 operations, such as conducting meetings, getting new members,
10 and voting, we were told there was no governance for
11 subcommittees and were provided with no further response for
12 guidance.

13 The members of SPMI were disheartened by the responses to
14 our outwork. We volunteer our time and expertise out of our
15 passion for mental health advocacy. The PCCEP did not
16 meaningfully consider our ideas or make efforts to understand
17 their importance. Serving as co-chair of this incredible group
18 of individuals has given me hope that one day the cries for
19 help from the mental health community will be heard and
20 addressed by local leaders; however, our interactions with the
21 PCCEP have shown that our talents and efforts would be more
22 effective and appreciated in a different forum.

23 As such, all of the members of the SPMI have decided to
24 withdraw from the subcommittee and will not be planning or
25 attending a March meeting.

1 We would ask that the Court take into consideration the
2 experiences of the members of the people -- the Subcommittee
3 for People with Mental Illness before making a decision on
4 whether the defendant has substantially complied with the terms
5 of the settlement agreement.

6 Thank you, Your Honor.

7 THE COURT: Thank you, Ms. Marshall. I appreciate
8 you being here, your oral comments and written comments, which
9 I have read. Thank you.

10 MS. MARSHALL: Thank you, Your Honor.

11 THE COURT: In a few moments we'll take a mid-morning
12 recess. And when we come back, I'll be pleased to hear from
13 Ann Brayfield, Elizabeth -- I can't -- Reetz or Peetz? I'm
14 sorry. Then Barry Joe Stull. Then Linda and then Tony,
15 followed by members of Portland Copwatch. And if anyone wanted
16 to present brief testimony but has not yet heard their name
17 mentioned, let my courtroom deputy know during our recess.
18 We'll do that.

19 Then what I would like to do is maybe we can do this right
20 now at the beginning of this short recess. I would like our
21 court reporter to speak with the counsel primarily for the
22 United States, Portland Police Association, and the City, and
23 discuss among yourselves how much time, if you -- if at all,
24 you want for a midday break. It doesn't matter to me whether
25 you want a full lunch break, a part lunch break, or just

1 another short recess after a little while. But as long as the
2 three sets of counsel can agree and our court reporter is
3 willing, whatever you want is fine with me. Just let me know.
4 And then also I invite all five of the parties here to consult
5 with each other at the appropriate time. And let me know your
6 thoughts about moving forward and next steps.

7 I still, of course, do very much look forward to hearing
8 anything that the United States, the Portland Police
9 Association, and the City of Portland have to say and in
10 whatever order you wish to say it. I know that you probably
11 had some prepared remarks. As I said, I will listen to
12 anything and everything that you all wish to say, but I also
13 know that as -- the excellent trial lawyers that you all are,
14 you're sometimes prepared to rearrange things and do things a
15 little differently.

16 So among the things that I'm most interested in hearing is
17 your reactions and responses to many of the written comments
18 that we have already received, including from the Mental Health
19 Alliance and from the AMA Coalition, your responses to many of
20 the oral comments that we've heard this morning, and your views
21 in terms of where things go next.

22 I think you recognize a realistic possibility that I'm not
23 prepared to say today that there is substantial compliance with
24 all aspects of the settlement agreement. And if that's going
25 to be the result of today, what do we do next? And what do you

1 all recommend? And I think the five of you should confer
2 mostly about process issues. You don't have to give me the
3 substance of that right now; although, as I said, anything that
4 you all wish to say is most welcome. But I think you should
5 spend some of the time before you speak to say that.

6 So, Jill, is 10 minutes sufficient break for you right
7 now, or do you want more?

8 THE COURT REPORTER: 10 is fine.

9 THE COURT: 10 is fine.

10 When we come back, let me know what the counsel and the
11 court reporter would like to do in terms of the next break
12 after that.

13 Ms. Reeve?

14 MS. REEVE: Yes, Your Honor. Thank you. There are
15 the -- one of the PCCEP co-chairs is here and a number of the
16 members of the PCCEP, and when would the Court like to hear
17 from them?

18 THE COURT: I would say whenever the parties
19 recommend and/or want after I complete with the public
20 testimony that I have just identified. I know they're public
21 too. So whenever you recommend, whenever they want, but I
22 think what I would like to do in the next order is
23 Ms. Brayfield, Ms. Peetz, Barry Joe Stull, Linda, Tony, and
24 representatives from Portland Copwatch, and then I'll be glad
25 to hear -- if you recommend that they go next or the parties

1 recommend they go next, that's fine. If you recommend that
2 they go after some presentations from the parties and from the
3 COCL -- whatever you recommend is fine with me.

4 MS. REEVE: Thank you, Your Honor.

5 THE COURT: Thank you, all.

6 Ten-minute recess.

7 (Recess taken.)

8 MR. GEISSLER: If it please the Court, Your Honor,
9 one half hour for lunch would be appropriate. And as to how we
10 proceed down the road, I believe that discussion will take
11 place during the lunch break and after consideration of
12 whatever other statements are offered to the Court.

13 THE COURT: That sounds perfect.

14 MR. GEISSLER: Thank you, Your Honor.

15 THE COURT: So certainly before we get to that lunch
16 break, I do want to complete the public testimony, and I think
17 we're on schedule for doing that.

18 So let's proceed to Ms. Ann Brayfield, followed by -- a
19 slight change -- Andrew Kalloch, I think Vadim Mozyrsky, and
20 then we'll go back to Barry Joe Stull, Linda, Tony, and then do
21 the Portland Copwatch participants, and then Nancy Newell,
22 Debbie Aiona from the League of Women Voters, and
23 Shawn Campbell.

24 All right. Ms. Brayfield.

25 MS. BRAYFIELD: Good morning, Your Honor.

1 THE COURT: Good morning .

2 MS. BRAYFIELD: Thank you very much for this
3 opportunity to speak with you again today. I have been here
4 many times, I believe, over the last eight years.

5 THE COURT: Welcome.

6 MS. BRAYFIELD: Thank you.

7 I have two things I would like to address. One is
8 Section 9. And as I looked over Section 9 in the PCCEP's
9 interim report, I put together what I saw, from my perspective,
10 and I shared that in a letter to the PCCEP, which I also gave a
11 copy to the Department of Justice and spoke to the PCCEP last
12 night.

13 I think I agreed with some of their findings of
14 substantial compliance. I disagreed with others. And I think
15 the reason -- and primarily I disagreed with paragraph 145 and
16 147, 148, and 149. And my disagreement was when I looked at
17 each of those paragraphs and what was asked in each of those
18 paragraphs, I was looking at whether or not, if things were in
19 substantial compliance, would the PCCEP be able to do the job
20 that was being asked of them and that the community would want
21 from them, and I didn't feel like these were adequately
22 addressed, particularly when they said we would assign
23 substantial compliance with one caveat. And I said as soon as
24 you do a caveat, I feel like we're talking about partial
25 compliance and there's still an issue to be addressed. So that

1 is what I spoke about last night.

2 And my largest concern with finding that whole section in
3 compliance is I think that it isn't going to serve the PCCEP
4 when they don't yet know whether the data that they're looking
5 for to do their job is being provided to them on -- in a timely
6 and consistent basis. And I think if you read through their
7 report, you'll see some of the inconsistencies and some of the
8 things that at least I wouldn't feel, if I were a member of
9 that body, that I could really see I could depend on and that
10 we were really working.

11 And that isn't to say that the City hasn't done a
12 considerable amount of work because I believe that they have.
13 I mean, I believe where we are now is not where we were back,
14 but I also believe we still have a ways to go and that the
15 community oversight is key because that is what's going to
16 serve the community after the agreement goes away.

17 And so my biggest concern is that that is going to
18 function and function well and be able to serve the community
19 going forward, so I will leave a copy of this.

20 THE COURT: Excellent. Please do.

21 MS. BRAYFIELD: And my other concern goes beyond
22 Section 9. And that is, if I look at the whole picture, and --
23 to think that we're on the road, down that one year, I would
24 have to say in 2019 I felt like, oh, in terms of people
25 interacting with officers and they were in crisis, and they

1 ended up dead.

2 I looked at 2010, which is where I came into this as a
3 community member, as a parent, and as someone who is familiar
4 with young people with learning differences who might not
5 respond to an officer in a way that they would end up being
6 alive at the end of that because they don't understand,
7 necessarily, socially in the same way that other neuro-typical
8 people do.

9 So I went to the Department of Justice, as you know, in
10 2011 and presented some materials to them and said, "I think
11 you need to come in. I think we need your help in this
12 community." Well, that came to pass.

13 But when I looked at 2019 and I saw that five people lost
14 their lives in a deadly force kind of situation, I said, "Oh, I
15 feel like I'm back in 2010." I know I'm not. I know a lot of
16 work has been done, but what kept coming to me was all of these
17 things have been put in place -- you know, policy, practices
18 and so on -- but do we have the outcome? And I have been told
19 this isn't about outcomes. It's about, you know, have we
20 crossed all our T's and dotted all our I's and done those
21 things that the agreement says that we need to do?

22 THE COURT: Well, they're related, aren't they, in
23 that --

24 MS. BRAYFIELD: Yes.

25 THE COURT: -- to dot our I's and cross our T's, one

1 would hope that over time there would be an outcome that is
2 better?

3 MS. BRAYFIELD: Yes. Exactly. And that's what
4 disturbs me.

5 And what I kind of took away from what happened in 2019
6 was I looked at the different cases where things turned out
7 well and where they didn't turn out so well, and I said what
8 can we learn from those cases where things turned out well and
9 everybody went home safe or got the help that they needed?

10 So I looked at those, and I said -- and then I looked at
11 the ones where they didn't, and I said can't we look and
12 publicly talk about and train to and work through what went
13 well on the street so that when we talk about de-escalation --
14 and I know there's been a lot of de-escalation training. Well,
15 how was it that de-escalation happened in some of these cases
16 and didn't happen in some of these other cases, and what can we
17 learn from those cases where it worked? And can't we have a
18 public analysis and speak about what works? I don't see that
19 as happening.

20 And I think what really brought up my distress was what
21 happened in December with Koben Henriksen, and he had an
22 interaction with two officers and de-escalation worked, and he
23 got talked down, and he got taken for some help.

24 A couple of weeks later, one of the same officers who was
25 involved in that earlier encounter arrived on the scene with

1 another officer, and in 20 seconds, or so, Mr. Henriksen was
2 dead. And the behavior, at least everything I have been able
3 to read in the case, the first encounter and second encounter
4 was very similar. He was in a similar kind of state. He had
5 these two little knives. He was in the same intersection.
6 What happened? Why did he walk away alive one day and he was
7 dead the next? And that is what I think we have to learn from.

8 And if we -- I don't know, you know, in all the legalities
9 and all the agreements in the world, how you accomplish that.
10 But that is what I look at and that's what I say. We have
11 something to learn. We have a ways to go. We can't be done.
12 And I guess that's why I really come to you and I ask you, as I
13 know you do, to consider these things in all ways to Sunday and
14 to help us find a way that we're not done when we're not done.

15 Thank you.

16 THE COURT: Thank you, Ms. Brayfield. Thank you for
17 those comments.

18 Mary, would you take Ms. Brayfield's written comments?

19 Thank you.

20 I believe now for scheduling issues and other
21 accommodations -- and I apologize if I'm mispronouncing your
22 names. Mr. Vadim Mozyrsky or Andrew Kalloch.

23 Please state your full name, spell your last, and I
24 apologize for any mispronunciation.

25 MR. KALLOCH: Andrew Kalloch, K-a-l-l-o-c-h. I'm a

1 co-chair of the Portland Committee on Community-Engaged
2 Policing. Thank you very much, Your Honor, for the time this
3 morning, and thank you to all the parties, the amici, and all
4 the members of the public who have testified this morning. One
5 of our core values that we established as a PCCEP way back when
6 we first started meeting in, I guess, September of 2018 was to
7 assume positive intent. And I have been thinking about that as
8 I have -- as I have been sitting in the second row, because
9 it's not easy, as the leader of an organization, volunteering
10 your time, to hear words like "failure," to hear words like --
11 you know, like -- like being "insensitive" or "ill-informed" or
12 "disrespectful." To say the least, that is never the intent of
13 any of the volunteers, and I just want to reiterate to the
14 Court that I personally ascribe positive intent to everyone who
15 has testified and honor their testimony.

16 I do want to take just two minutes to give you an overview
17 of what PCCEP decided last night at our board meeting as our
18 statement, which you read this morning, as well as address a
19 couple, though certainly not all, of the concerns that have
20 been raised more broadly.

21 First, I want to note that while PCCEP has submitted a
22 document that states that we believe the City to be in
23 compliance with Section 9, the section governing our body, we
24 by no means believe that PCCEP is a final product. We are a
25 work in progress. We are better now, in my opinion, than we

1 were six months ago. We were better six months ago than we
2 were a year ago. In particular, we have a continued need to
3 build on our foundation of trust by expanding outreach to all
4 corners of the city.

5 It's not always seen how we engage with the community, but
6 one of the things that we mentioned at our meeting last night
7 and in other commerce is that the members of our committee,
8 which is a broad, sort of, cross-section of the community, have
9 individual meetings with people in their network. They have
10 meetings with institutions and organizations outside the
11 structure of our public meeting process in an effort to bring
12 those folks into the work that we are doing and not just to
13 bring them in so that they sit at their meeting and, you know,
14 increase our numbers. That is not our goal. Our goal is to
15 leverage their wisdom and to actually learn from them. Because
16 while there are 13 of us on the committee, you know, there are
17 700,000-odd of us here in the city, and our goal is to learn
18 and reflect back the community's knowledge of what it needs.

19 Now I want to address a couple of the specific concerns.
20 We'll start with attrition.

21 So I was glad that one of our members last night mentioned
22 that while it has been said that there are only two members of
23 the original committee that are still on, really the number is
24 closer to four because the two alternates that started way back
25 in September of 2018 are now sitting on the committee along

1 with two of the folks who started.

2 That doesn't mean that that number is terrific. But when
3 we're talking about a fully volunteer committee and the type of
4 commitment that we are making over an 18-month period, it's not
5 surprising to see attrition, and that attrition has been seen
6 for a wide variety of reasons. If you ask the folks who have
7 left, they will give you a lot of reasons.

8 Our two youth members, for instance, moved on to college.
9 That's a good thing. We wouldn't expect them, necessarily, to
10 stay on. We have had other members move for opportunity -- job
11 opportunities, and we have had some members, assuredly, who
12 have left because they have been disappointed with their
13 experience -- each of which seems to me a reasonable ground for
14 leaving. But I -- I would caution against this idea that we
15 haven't been, sort of, fully staffed.

16 We had another meeting last night in which we approved
17 recommendation -- or we had three terrific alternates, two of
18 which will be seated upon recommendation by the mayor, and we
19 will once again be a full body, and it goes in waves. And so
20 we're happy to continue to work to fill that alternate pool as
21 needed and to make the experience as positive as it can be.
22 Again, not only for the PCCEP members themselves, but on behalf
23 of the community that we're seeking to serve.

24 THE COURT: Let me ask you something and follow up on
25 this.

1 MR. KALLOCH: Sure.

2 THE COURT: I have, over the course of my adult life,
3 sat on many different committees and boards. And over a long
4 enough period of time, there's plenty of just natural and
5 perfectly ordinary reasonable attrition. I totally get what
6 you're saying about the youth members going off to college.
7 I'm glad for them. But for those members who have been serving
8 for less than 12 months, who have left because of either
9 disappointment or feelings that the committee was not serving
10 the purposes for which they were hoping it would serve, what's
11 your response or view to that? How can we make it better and
12 have fewer of those instances going forward?

13 MR. KALLOCH: I'm truly not sure, Your Honor, to be
14 blunt, but I do think that some of the processes -- and
15 "process" was mentioned a couple of times, and I think it's
16 important to hone in on that -- that have been established in
17 recent months, can help to ensure that even when the ultimate
18 outcome of a PCCEP meeting is not what the person wants, that
19 the process that we took in considering a given recommendation
20 or outreaching to a community in a given way is respected, and
21 therefore people believe that their service is something that
22 is honored.

23 So the way I am focusing on it, as one of the leaders of
24 the group, is to focus on process rather than product, in terms
25 of attrition, to make sure that people understand how

1 something -- how a bill becomes a law, PCCEP version, and --
2 and recognize that they are going to get a fair airing of their
3 idea at the subcommittee level and then, as necessary, at the
4 full committee level. It doesn't mean that they're always
5 going to be agreed upon.

6 Vadim and I were outvoted by our committee members just
7 last night, and as a leader, I recognize that that's probably a
8 good thing from time to time because, Lord knows, I'm not right
9 all the time.

10 So I think, again, process over product at this stage is
11 important for us, but also to not lose sight of the fact that
12 we have created work product. And I was grateful for the City
13 in reviewing last night at our meeting all the recommendations
14 that we have given and the responses, or in certain cases, lack
15 thereof, that we have received from the City.

16 We have had stumbles here and there, in terms of making
17 sure that we efficiently transmit our recommendations to the
18 City, so that they can decide how and whether to act on them;
19 but I think, in the aggregate, we have seen the City respond in
20 a meaningful way to many of our recommendations, albeit not
21 all, and we look forward to continuing that process moving
22 forward.

23 Thank you, Your Honor.

24 THE COURT: I didn't mean to cut you off with my
25 question. Are there other comments you wanted to make?

1 MR. KALLOCH: Just one last thing, because it's been
2 mentioned a number of times, community organizing. So folks
3 mentioned the need for, you know, full-time community
4 organizing and that PCCEP doesn't do community organizing.
5 Again, I'll reiterate that we tried. The members of the
6 committee try outreach on a weekly basis. We have dozens and
7 dozens of meetings that go beyond the formal, sort of, public
8 open meetings that we have, in an effort to draw people in. Is
9 that enough? No, of course not. We would love to have this as
10 our full-time job, but I'm going to run out of here, as is many
11 others, back to their full-time jobs.

12 So would be -- having a community organizer be a great
13 addition? Of course it would. Two or three while you're at
14 it. But I think what is important for us, in lieu of that
15 additional resource, is to continue to have a board that is
16 motivated to do the work that is broadly representative of the
17 community and that can specifically work with every corner of
18 the community to bring them into the work. It doesn't mean
19 bring them to our meetings. It means bring them into the work
20 in a substantive way and get their input on what we're trying
21 to achieve. Because the 13 of us are not going to do this
22 alone. We need a buy-in, and that's why we're doing the
23 outreach to try to secure that.

24 THE COURT: Speaking of which, has PCCEP had
25 sufficient or do they envision more collaboration and

1 discussion with two of our amici here -- AMA Coalition and the
2 Mental Health Alliance -- to see what ideas and/or
3 contributions they can make, either for community outreach,
4 including such things -- and I'm not going to micromanage
5 this -- but such things as the concerns of where the meetings
6 take place, the advance notice of the meetings, things like
7 that?

8 Has there been enough of that collaboration, do you think,
9 or do you envision more collaboration going forward?

10 MR. KALLOCH: We would always love more
11 collaboration. If anything, it's on us, as leaders, to reach
12 out to MHA and AMAC and others who have been involved in this
13 process. As we noted in our submission to the Court, we
14 realize that we stand on their shoulders; that we are the
15 leaders of this little piece, but that they have been doing
16 this in the community for decades, if not generations.

17 Both of those groups have attended our meetings loyally.
18 They have provided feedback on a variety of the recommendations
19 that we have brought up, and we appreciate that, and I look
20 forward to doing more with them. And I'll -- I'll take it upon
21 myself, as a member of our Steering Committee, to try to
22 strengthen those bonds even further.

23 THE COURT: Thank you, Mr. Kalloch, I appreciate your
24 comments here.

25 MR. KARIA: Thank you, Your Honor.

1 THE COURT: And I appreciate your work on the PCCEP.

2 MR. KALLOCH: I appreciate that. Thank you.

3 THE COURT: Mr. Mozyrsky.

4 MR. MOZYRSKY: Thank you, Your Honor.

5 THE COURT: Am I pronouncing it even close to --

6 MR. MOZYRSKY: Perfectly. Perfectly. Both first and
7 last names. Thank you for your time, Your Honor. I appreciate
8 you hearing me out. My name is Vadim Mozyrsky,
9 M-o-z-y-r-s-k-y. I am the secretary of PCCEP. And Andrew, the
10 co-chair, has done an admirable job of explaining the general
11 circumstances as to why we voted yesterday that PCCEP -- we
12 feel that PCCEP is in compliance with the -- the City is in
13 compliance with the settlement agreement with respect to
14 Section 9 of PCCEP. And the vote was almost unanimous. I
15 ought to say that I support the statement. I voted against it
16 because of an amendment, but I was the only dissenting vote.
17 So including Patrick Nolen, who was here today saying PCCEP was
18 not working, he, likewise, voted that PCCEP was in compliance
19 and the City is in compliance with Section 9. So including
20 myself, it would have been a unanimous vote.

21 I strongly feel that the "process versus product" argument
22 that is being produced today is -- is really what we should
23 focus on. The process is working. People can disagree on the
24 product, people can disagree on how the Portland Police Bureau
25 might handle individual situations, but PCCEP, the process, is

1 working. People are applying to be on PCCEP. The mayor is
2 appointing membership to PCCEP. We have had a quorum every
3 single meeting of PCCEP. We've had votes. We've made
4 recommendations to the City. The City has accepted those
5 recommendation. And, in fact, yesterday made a presentation on
6 all the recommendations we've made, their statuses, and how
7 they have been incorporated, both by the City and the police
8 bureau. So it is working.

9 It was said that we're not a seaworthy vessel, and I have
10 to say that working on PCCEP day in and day out on the
11 subcommittees and on the main committee, all hands are on deck.
12 We have an admirable group of individuals, who I am proud to
13 work with, and we're all doing our best.

14 The standard should not be are we all community activists?
15 Are we all policy wonks? Are we all experts on police
16 procedure? Do we all have unlimited time to donate to this
17 committee? That seems to be what some people are recommending
18 for the PCCEP standard. The standard is is the City supporting
19 us with our needs and are we doing our best to receive the
20 comments from the general public, incorporate those comments,
21 and present them to the police bureau, the police chief, and
22 the City? And we are doing that.

23 There's been some discussion about our subcommittee on
24 mental illness and on people with mental illness. To set the
25 facts straight, we did vote for one of the recommendations.

1 Another recommendation that was discussed here today, that
2 people made it seem like it was not considered, the fact is
3 that that recommendation was considered. A couple of people
4 wanted to make minor amendments in order to -- what they feel
5 deal with some of the legal issues presented in their
6 recommendation. That recommendation was withdrawn because
7 people did not want amendments to be heard.

8 And I think it is an inconvenient truth that PCCEP did not
9 vote down that amendment. It was withdrawn by the people who
10 posed for it. And it would have passed. We had six people
11 that voted for it, a couple of people that wanted to have
12 amendments. Unfortunately, we didn't have that opportunity.
13 So let that not be a threshold as to whether the City is in
14 compliance or, for that matter, whether the PCCEP people are
15 doing their job.

16 As I mentioned, I think everybody is doing an admirable
17 job, in my opinion, working with these. We're getting support
18 from the City. A community activist? That would be great.
19 But we're reaching out. I went to neighborhood associations,
20 as well as secure -- or safety committees, told them about the
21 work PCCEP was doing.

22 A couple meetings ago, they showed up to our meetings. We
23 do have substantial community attendance at these meetings.
24 You've heard that we have one or two people. That could be
25 farthest from the truth. We have people that speak out and

1 make their piece known. Different people come at different
2 times. Some people come at every meeting. We do have
3 community support and community interest and community
4 feedback.

5 So with respect to that, I just want to say that there
6 might be disagreement on outcomes, and that is between the
7 Justice Department, the City, and with yourself as the
8 oversight, as to what all that means. But if you -- if the
9 word of PCCEP has any meaning in today's hearing, it's that we
10 feel that we're being supported by the City. We're being given
11 the resources that we're requesting. We're given the data that
12 we're requesting. We have meetings every single month that's
13 attended by city officials, by police bureau officials, by the
14 community members, and we are making recommendations. They are
15 being heard. We are doing our job.

16 Thank you.

17 THE COURT: Thank you, Mr. Mozyrsky. I appreciate
18 you being here and your work on PCCEP as well. Thank you.

19 All right. May I hear next from Mr. Barry Joe Stull,
20 followed by Linda and then Tony.

21 Good morning, Mr. Stull.

22 MR. STULL: Good morning, Your Honor. Thanks for
23 this opportunity. I'm appearing here today because I want to
24 clarify that there are people, myself included, that are
25 perceived as persons with a mental illness. My disease is

1 called central pain syndrome. It's a neurological disorder,
2 and it's a product of a car accident in 1976. And by the time
3 I had surgery in 1980, I already had permanent nerve damage.
4 And what's happened in the passage of time is that a nerve has
5 grown in and stimulates the pain relay which was designed at
6 birth to report pain for the site that now can't do that.

7 So now this is being triggered by something that is either
8 muscle, skin, or connective tissue. It doesn't really matter.
9 Since I stood up from sitting back there, I actually turned
10 that on just by that motion.

11 Okay. Well, the reason I'm sharing that is because I have
12 this condition and thanks to the expertise of my neurologist,
13 Dr. Robert J. Grimm, who passed away in 2011, he operated a
14 brain research lab in -- starting in, I guess, the 1960s, and
15 he had actually recommended my back surgery in 1980. And he
16 was treating me for basically ten years -- from 2000 on to
17 about 2010. And I think what is important, as a person who is
18 basically living in the middle of a triangle of three deaths of
19 persons with mental health crises -- most recently 103rd and
20 Washington, which is five blocks from my house -- bullets go
21 much further than that, so there's a concern that even citizens
22 could be victims of these ongoing police shootings.

23 And what I want to express is as a person who has my
24 disability, central pain syndrome, as part of my difficulty,
25 most exemplified by my encounter in City Council with the

1 Portland police, which is the number one video response for
2 typing my name into a search engine, and what it shows is that
3 although I had identified that I had been triggered and I
4 needed an ambulance to return to Emanuel Hospital, where I had
5 been twice prior in that same week, that event, through this
6 filter, where once the Portland police were involved, the staff
7 on duty at city hall could not call an ambulance, and once an
8 ambulance was belatedly dispatched, I never had encounters with
9 the EMT. A product most obviously by the culture -- evidenced
10 by the culture, but important to me is the responding sergeant,
11 who was the head of that event, was an EMT, and he didn't
12 recognize that I had my disease, and he didn't recognize that I
13 was experiencing pain. And he didn't recognize that I had any
14 need to have an encounter other than what I have been through,
15 with a trial and reversal on appeal and another trial they're
16 telling me. They want to have a do-over. Even though I
17 prevailed on appeal in April of 2019, they want to have another
18 trial on this. And the issue is -- what happened in that
19 situation is one that is going to repeat itself with other
20 persons.

21 And I'm sharing this with you this morning, Your Honor, to
22 let you know that what happens with me and with others is once
23 our fight-or-flight is triggered, then that really takes us out
24 of our frontal lobe higher reasoning and puts us into what I'll
25 just refer to as our lizard brain. It's the limbic. It's the

1 fight-or-flight response. And once somebody is triggered into
2 that situation, it could actually be months, depending on
3 what -- a mother might have seen her child get run over by a
4 car. It could be months before her body is even recovered to
5 that normal level from that event.

6 So these are things that happen, and I think that what
7 really speaks to the difference between the new Portland and
8 the old Portland is -- there was a now-gone restaurant called
9 The Overlook, after it was Devlin's for years, up by Interstate
10 and Skidmore, and my buddy and I were having breakfast about
11 ten years ago and talking about ongoing issues, like the
12 James Chasse Jr.'s story -- it kind of is known for starting
13 this whole process -- and the gentleman cut in, and he
14 surprised us, because he was an elderly black gentleman who was
15 a police officer, and he said, "We used to talk to people. Now
16 they just shoot them." And that's really the issue.

17 If somebody is in that limbic fight-or-flight response,
18 myself included, I -- I can watch my IQ points just drop by 40
19 right there -- 50 right there. I can lose my ability to
20 vocalize.

21 So the kind of things we have to understand, Your Honor,
22 is we have to allow people to have the opportunity to center
23 themselves and to calm themselves down -- as you see me do
24 here, and I'm doing now -- and to really address the root of
25 the issue is that once people are set into that particular what

1 we're going to interpret as a mental health crisis, my -- maybe
2 it was a mental health crisis once I needed an ambulance and
3 people didn't take me serious that I actually had a
4 life-threatening condition -- yeah, that -- that can drive you
5 crazy. Right?

6 And the police officer that responded had his nametag
7 blocked by a Taser. And one of my triggers is if I see a
8 police officer and I can't read his nametag, because he's
9 blocking it with his microphone or collection of pens, I
10 immediately say, "That's a bad cop," because he is not letting
11 people know his name because he's going to do something dirty.

12 And the thing of it is, Your Honor, what part of this
13 limbic response is, is when we -- myself included -- and you
14 would, too, I suppose -- once we're put into that state of
15 mind, then ambig -- this goes for the police officers --
16 ambiguous information becomes threatening, and the things that
17 we hear -- we can selectively just pick out the threatening
18 words out of a sentence. When you say, "No one is going to
19 hurt you," or, you know, something, is the "no" word will just
20 disappear, because "Someone is going to hurt you" would be --
21 would be identified as -- the body as a threat.

22 So what I'm suggesting is that we all cool out. We stop
23 letting police officers block their nametags as the first sign
24 of respect. I can't believe they entered as evidence this
25 gargantuan thug blocking his nametag with a -- with a Taser,

1 and his supervisor said perhaps at another angle he could have
2 read that. No. When I can't read his nametag and he's
3 blocking it by a Taser, it's because he's a thug that gets away
4 with everything he did, Your Honor.

5 I was shocked to read a couple of things, and I'm going to
6 let you go with this: I read the transcript, because they went
7 for a new trial, so I had to revisit these things, and this was
8 what the State said, quote, "Fuck you. Fuck you. I have a
9 disability." And that was attributed to me, Your Honor. And I
10 never ever said that. So we're talking about a big, big
11 cultural problem.

12 And the police that bent my wrist all the way from the
13 council chambers down out to the car did that in full
14 compliance with the use of force. They're allowed to make me
15 scream out in pain all the way, waiting for the elevator, down
16 the elevator, all the way out to the sidewalk, where -- oh, how
17 does that make me feel? There's my ambulance that I don't get
18 to get in. I get in the police car. And then I respond by
19 breaking it because at that point my fight-or-flight is
20 internalized, and I'm either going to vent it or I'm going to
21 recover.

22 Fortunately, Your Honor, I have enough togetherness that
23 when I was across the street over here -- I'll let you go with
24 this: In 2012 I was arrested with what we now know is a serial
25 arrest of people violating the trespass exclusion policy at

1 Portland City Hall. I was on the agenda, and I was crossing
2 the plaza where they came out, and it was Sergeant Bacciagalupi
3 (phonetic) and it was Stuart Palmeter, both big guys. They
4 arrested me. They put me in the police car. I screamed my
5 whole -- my full head off because my lizard brain was
6 triggered. We drove a couple of blocks. I was outside the
7 precinct, and I asked the officer to turn down his car stereo,
8 which was behind my head and was making me ill because of my
9 central pain syndrome, and -- and it's a horrible disease,
10 Your Honor. It's terrible. Anyhow, the point is, is he not
11 only refused my request once I invoked ADA, he turned up his
12 radio and he got out, and I got out, and he started laughing at
13 me with the then Chief of Police/now Sheriff Reese. From the
14 time I decided -- I tried to do throat singing. I tried to do
15 whistling. What can I do to center myself? I decided I was
16 going to tear that police car apart. And within a minute, the
17 radio was off. And by the time they got me down to the bottom
18 of the ramp, it was over \$500 worth of damage, and the
19 headliner was torn down with my feet, and I had handcuffs
20 behind by back.

21 I don't want to be the Incredible Hulk because people just
22 don't have manners, because people don't have the opportunity
23 to center themselves and allow people to calm down. And we
24 really have to do something about police accountability, and I
25 suggest a good place to start is uncovering the nametags.

1 THE COURT: I want to ask you some follow-up, if I
2 may.

3 MR. STULL: Yes. Right.

4 THE COURT: Right now, as you explain it, it's very
5 clear. It's very understandable. I appreciate that
6 enlightenment. I take it, then, that when your limbic system
7 gets triggered or a situation -- a person in your situation
8 gets triggered, you're unable to explain, with the same degree
9 of calmness and rationality of what you've just said to me of
10 what is going on, to the police officer; right?

11 MR. STULL: It's something that we lose our
12 ability -- a couple of things happen. We get tunnel vision.
13 We -- you know, we might have some, you know, just trouble
14 hearing -- interacting with other people. So one thing that's
15 really important -- I shouldn't overlook this. It's really
16 important that people interact with one person. Even if
17 there's a group of people, that one person is the spokes-model,
18 we'll say that speaks for the group. And in my condition,
19 because -- because it's a damage in the central nervous system,
20 I actually lose my ability to vocalize, and things will come
21 out that are a product of the lizard brain.

22 Part of my experience at City Council was I said I killed
23 Amanda Fritz's husband. Well, I certainly knew that that is
24 not true, but I think what I was doing, Your Honor, how I was
25 responding, is that she's retired as a psychiatric nurse, and I

1 didn't know -- it's history's prank on us -- that that
2 particular agenda item was the mental health
3 something-or-other, but I was signed up about the partnership
4 with street musicians and the free music zone at Waterfront
5 Park and complaining about vacant affordable housing at
6 4066 Northeast Grand Avenue and all of these things were on my
7 agenda when I went into this environment where they mistook me
8 for somebody having a mental health crisis rather than somebody
9 that had a neurological disease that was really receptive to
10 fight-or-flight.

11 So to answer your question, the -- the lid comes off, the
12 top of the brain, when you have the fight-or-flight. And what
13 people with traumatic brain injuries, or, you know -- I don't
14 know what consequences I might have because I've got a couple
15 of lumps on my noggin, but these are the things that we have to
16 really get to the root of. Why are these people in these
17 particular moments of crisis, that result in -- in this --
18 how -- how do I end up with a Portland police officer touching
19 me in city hall? He had -- you know, there had to be something
20 with the space. There was a point where they were across the
21 room and there wasn't any issue. So that closing of the space
22 and all these things can be threatening. And having multiple
23 people giving you conflicting orders -- somebody says, "Don't
24 move." Somebody says, "Show me your hands."

25 THE COURT: Am I correct in hearing you say that what

1 would be a better response is for people who are trained to
2 understand what people like you are going through at that time,
3 there would be de-escalation techniques? They should
4 understand that. It requires better training, and then things
5 would not escalate to the level that you've described. Am I
6 hearing you correctly?

7 MR. STULL: Yes, Your Honor. But I want -- thank you
8 so much for understanding that, but I want to flip the coin
9 over and say what it is -- and I'm going to pick on
10 Officer Engstrom because he did use his force on me all the
11 way; although, he apparently didn't have to. It wasn't what he
12 was allowed to, and he did, and it hurt. You know, I was in
13 pain for months afterwards. But the point of it is, is that
14 there's something in his system where he could be very much
15 addicted to that adrenaline feed.

16 I know people -- myself, I -- I've got a piece of gravel
17 because I wrecked coming down on Highway 26 on my bicycle, down
18 on the other side of the tunnel. So people do things that are
19 really exciting, and that could be very much part of the --
20 part of the --

21 THE COURT: That's an issue of both recruitment and
22 training.

23 MR. STULL: And understanding that they could very
24 well be falling prey to these things, like I said, like the
25 ambiguous information being determined negatively and feeling

1 it a threat.

2 THE COURT: Understood.

3 MR. STULL: All right. Thank you, Your Honor. Any
4 other --

5 THE COURT: Thank you. I very much appreciate you
6 being here and sharing this with us.

7 MR. STULL: And, now, I'm here with the benefit of my
8 bicycle, endorphins, and canvas therapeutics.

9 THE COURT: Thank you. I appreciate it.

10 Is there either a Linda or a Tony that signed up to speak?

11 Come on up and identify yourself, please. If you want to
12 state your last name, you're welcome to; if you don't, you
13 don't have to.

14 LINDA: Is it still morning, Your Honor?

15 THE COURT: Yes. For 11 more minutes. Good morning.

16 LINDA: Good morning. I won't state my last time, as
17 the last time I was here I was accosted by someone that left
18 here and they used my first and last name to draw my attention.
19 So my name is Linda. We'll just leave it there.

20 THE COURT: That's fine.

21 LINDA: I'm a bit nervous. Sorry. I'm here for
22 two -- two reasons this morning. One is to extend an
23 invitation to Your Honor to come to where I spend my days and
24 time organizing as a community organizer for Sisters of the
25 Road. I am not here in their capacity, but I am their current

1 acting in-term executive director at the time being, and I
2 also, prior, hold the position of the board president. Excuse
3 me for my nerves.

4 The other thing I'm here to offer is a poem. You have
5 been offered here today many -- a bounty of truth, so I don't
6 want to reiterate that. I want to offer you a poem.

7 My name is Homelessness. I survive on the streets of the
8 city. I may look like I am in crisis, but if you knew me, you
9 would know a part of my crisis is that I have little or no
10 access to safe sleep, human interaction with the police,
11 nonviolent abuse or abuse from service providers, and food.
12 There are a gamut of other events that could support a crisis.
13 Those are just a few. My name is Homelessness. I don't want
14 to go to Wapato. I want humanization. I want support from
15 this -- my community -- and I want those systems to do the
16 work, the true work of support.

17 That's all I have. And I'll leave my card with --

18 THE COURT: Yes, I was going to say if you can give
19 us some contact information for you. I do know Sisters of the
20 Road. I think very highly of that organization. We'll be in
21 touch.

22 LINDA: Thank you, Your Honor.

23 THE COURT: Thank you, Linda.

24 Tony, if I have that -- reading that correctly.

25 TONY: Good pre-afternoon, Your Honor. My name is

1 Tony. I'll decline from using my last name at this time.

2 I was not actually aware of this proceeding until
3 yesterday, when I was invited by Linda to come here. I didn't
4 prepare anything. I came in here with the intention of an open
5 heart, an open mind. The feelings I'm getting is like a really
6 bad divorce right now. It's like people feel betrayed. I feel
7 betrayed. I grew up thinking cops were helpful protectors.
8 You know, if you're in danger, you call a cop. I tell people
9 now, "Don't ever fucking call a cop on me. If I'm in crisis,
10 do not call a police officer."

11 I volunteered with American Red Cross for four years. I
12 worked alongside first responders. I worked alongside cops. I
13 have never seen the behavior anywhere across the country,
14 anywhere I worked, other than this department. It's -- they
15 should be ashamed. I don't know where the disconnect is in
16 this department and the humanity, but it's there. It's there,
17 sir, and it needs to be found, and it needs to be analyzed, and
18 it needs to be fixed. Just like any other kind of sick, toxic
19 relationship, we can't divorce each other. We have to work
20 together. But we can't keep hurting each other. You can't
21 keep killing us. You really can't keep killing us and hurting
22 us and oppressing us and calling us shit names and harassing us
23 on the daily. You can't. Not unless -- not if you want us to
24 help you keep us safe. Because we can help each other to keep
25 everybody safe. We're not sheep; you're not dogs. We're not

1 animals. We don't need to be put down for our protection or
2 for yours. We're human beings just like you.

3 That's all I've got to say.

4 THE COURT: Thank you, Tony. I appreciate you being
5 here.

6 Before our lunch break, let's hear from representatives
7 from Portland Copwatch, Nancy Newell, Debbie Aiona,
8 Shawn Campbell, I believe, and then we'll take our break.

9 Good morning, almost afternoon, Mr. Handelman.

10 MR. HANDELMAN: Can we all approach at the same time?

11 THE COURT: Of course. That's fine.

12 Mr. Handelman, I have read the two emails that you've
13 provided. They were lengthy, so I don't think there's a need
14 to read verbatim everything in those two emails, but I look
15 forward to you summarizing some of the key highlights or points
16 that you want me to take away from all of this.

17 MR. HANDELMAN: I appreciate that, Your Honor.

18 What we did is we took the first email, which was an
19 analysis of both the DOJ and COCL's reports, and merged them
20 into the testimony we're going to give you this morning.

21 THE COURT: Very good. Just remember speak slowly,
22 please.

23 MR. HANDELMAN: Yes. I promised Mr. Apodaca I would
24 do that.

25 THE COURT: Well, but now we have a different

1 reporter here.

2 MR. HANDELMAN: I see that.

3 THE COURT: Mr. Apodaca may have -- no. I was going
4 to make an inappropriate joke about he knew you were coming,
5 but --

6 MR. HANDELMAN: Yeah, he told me that on his way out.

7 So, Judge Simon, I'm Dan Handelman. I'm with Portland
8 Copwatch. Earlier this month, we sent in our written comments,
9 analyzing those two documents I talked about. The main
10 objective of today's status conference is to focus on whether
11 the agreements outlined for the Portland Committee on
12 Community-Engaged Policing is fair, adequate, and reasonable.
13 But our testimony addresses our disagreements with the analyses
14 that Portland is in substantial compliance with the agreement's
15 terms.

16 We're focusing mostly on deadly force, oversight,
17 community engagement and training, but also have concerns about
18 the status of other provisions.

19 As in the past, these are based on our observations of
20 public information and not being made on behalf of the AMA
21 Coalition for Justice and Police Reform.

22 Apparently, January 10 is the date that DOJ stopped
23 collecting data for this report. It sets in motion the
24 one-year period during which the City has to maintain
25 compliance to end the scrutiny of the federal government and

1 Your Honor.

2 Somebody mentioned this, but I'll point out the elephant
3 in the room. This agreement was signed and started under a
4 different presidency. January 10 next year will still be the
5 current president. So the DOJ that will be in place at that
6 time will still be in place at that point. So we would
7 appreciate a delay of the finding of the full compliance
8 until --

9 THE COURT: And let me just say right there what my
10 tentative thinking is, but I'll hear from the parties after
11 lunch, is at the minimum, I want to hear how things have been
12 going about 12 months from now, the latter part of February or
13 sometime in March of 2021. What I haven't yet decided is
14 whether we need to have some interim -- maybe six months from
15 now -- additional meetings. But in terms of basically looking
16 to see how things have been going for 12 months from today to
17 the future, I would be looking at scheduling a hearing, subject
18 to everybody's calendar and convenience, the later part of
19 February; sometime in March.

20 Go ahead.

21 MR. HANDELMAN: Thank you. Copwatch has been
22 tracking the agreement's progress since it was approved in
23 2012. We find both the reviewing entities are too generous.
24 The reports look at the question of whether the City has met
25 the basic mechanics outlined in the agreement rather than the

1 substantive transformation of the agency and its relationship
2 to the people of Portland.

3 The preface to the agreement that Dr. Haynes mentioned
4 talks about how the outcomes of the changes should build trust
5 with the community. We would argue that has not happened.

6 In October, COCL told the PCCEP that because there are no
7 specific metrics in the agreement, the Bureau does not have to
8 change its behavior to attain substantial compliance.

9 Key evidence of the lack of substantial compliance include
10 three major issues: Continue the use of deadly force against
11 people, especially those in mental health crisis; shortcomings
12 of the oversight system; and ongoing disproportionate police
13 actions against African-American Portlanders.

14 The promise of the agreement is for the Portland Police
15 Bureau to stop using excessive force against people in mental
16 health crisis.

17 As you've heard, the PPB shot and killed at least three
18 people in crisis in 2019, with numbers seemingly going up after
19 the agreement went into effect.

20 From 2005 to '09 only 15 people were subjected to deadly
21 force by on-duty officers.

22 THE INTERPRETER: Excuse me, Your Honor. The
23 interpreter just would ask that the speaker just slows down.

24 Thank you.

25 THE COURT: Please do your best, Mr. Handelman.

1 Speak a little more slowly.

2 MR. HANDELMAN: From 2010 to 2014, while the DOJ
3 investigation was initiated and the agreement was being
4 finalized, the number went from 15 to 23 people in a year, in
5 the five-year period; a 53 percent increase. And then the last
6 five years, from 2015 to '19, there were 27 deadly force
7 incidents, which was a total increase of 80 percent since
8 2000s -- the late 2000s.

9 One of the reasons the number of shootings keeps rising
10 could be the attitude of the DOJ, COCL, and the city officials
11 then we shrug and tell the community that these things just
12 happen sometimes. That attitude is essentially a green light
13 to use deadly force.

14 As mentioned in our June 4 letter to the Court, community
15 members in Portland who have witnessed or read about various
16 deadly force incidents take a note of the PPB's over-policing
17 of houseless persons and/or attended demonstrations attacked by
18 police do not have the same feeling of progress as these two
19 reviewing bodies.

20 In addition to failing to answer questions about whether
21 the PPB, checking the boxes on the report, has led to
22 improvement in community trust, the two reports barely contain
23 any statistics. The only chart in the DOJ's 23-page report
24 shows a decrease in the number of days it takes to investigate
25 misconduct cases.

1 The COCL's 38-page report does not contain a single chart,
2 graph, or table, despite the consultants wrapping up an average
3 of \$303,000 a year since being hired in 2014. Enough to fund
4 our group for over 30 years.

5 Despite the inadequate attention to outcomes, the DOJ and
6 COCL have occasionally prompted corrections to the Bureau. An
7 important question: Once they're gone, who will be able to do
8 this?

9 Institutionally, the police cannot be left to police
10 themselves. Otherwise, it would not have taken, as Dr. Bethel
11 said, over five years to reach this so-called substantial
12 compliance.

13 The new reports reveal both entities stop the Bureau from
14 training officers to use knives as a defensive tactic because
15 no policy existed guiding their use. Also, the DOJ found a
16 use-of-force investigation that was dismissed, even though
17 there was not clear and convincing evidence that no force was
18 used. The incident occurred in 2016, and the complainant
19 appealed the findings to the Citizen Review Committee in
20 January of this year. That case was previously reviewed, both
21 by -- internally and by the Independent Police Review, but
22 dismissed when they could not figure out which of the 17
23 officers involved handcuffed the complainant.

24 The voluntary members of PCCEP do not have the time or
25 bandwidth to continue such work. Preferably -- sorry. The --

1 the -- someone on their staff must be given authority to
2 continue such work, preferably someone with actual ties to the
3 Portland community who will press the Bureau, not just on these
4 overt violations, but also the deeper problems addressing
5 force, bias, and other issues.

6 The issue which precipitated DOJ's involvement, which were
7 community concerns about racial profiling, was handled simply
8 by the PPB delivering statistics about traffic and pedestrian
9 stop data of the PCCEP. While that group and Section 9 of the
10 agreement focus on community engagement, the City seems
11 unwilling to engage in difficult discussions, preferring
12 instead to tell the community their perspective and run away
13 from controversy.

14 Because the two reports only focus on accountability and
15 community engagement, there's no discussion of other ways in
16 which the City's supposed substantial compliance does not serve
17 to build trust with the community. One example is despite
18 seven years of urging a change -- people like me urging a
19 change, the Behavioral Health Advisory Committee still does not
20 hold meetings that are open to the public. And I just want to
21 add, also, that PCCEP made recommendations about the Portland
22 Police Association contract, which is currently being
23 negotiated and has a very deep impact on all these issues, and
24 they did not get a response 60 days after they voted on that.

25 Last night, former Captain King reported that he -- that

1 the mayor had received them, but he had not promised a response
2 to those recommendations.

3 And when the members of the PCCEP came up and told you
4 about the vote that they took last night about their statement,
5 they failed to read the amendment that was made where they
6 raise the same concerns that you have been hearing from other
7 members of the community that there's a long way to go before
8 we meet the -- the spirit of the agreement.

9 THE COURT: Thank you very much, Mr. Handelman. I
10 appreciate that.

11 Ms. Hannon.

12 MS. HANNON: I'm Regina Hannon, a member of Portland
13 Copwatch, and I'm going to speak about oversight and
14 accountability. Key to the agreement's success is a functional
15 system to hold officers accountable when they violate Bureau
16 policies. While the IPR has expanded in size and scope since
17 the agreement was implemented, there has been no uptick in
18 holding officers accountable. IPR's dismissal rates have gone
19 down from about 70 percent of all complaints to only
20 50 percent, but that is mostly because IPR is now required to
21 investigate every use-of-force case.

22 In the case noted previously, the DOJ required the City to
23 conduct further investigation because there was no dispute
24 force was used. IPR's new guidelines for deciding when there
25 is clear and convincing evidence that no investigation is

1 necessary would supposedly prevent such problems in the future,
2 but that remains to be seen.

3 In a handful of complaints appealed to the Citizen Review
4 Committee, they have made inroads into accountability by
5 challenging Bureau findings. They have sparingly used the
6 power granted to them by the agreement which lets them require
7 the Bureau to conduct more investigation, but neither the COCL
8 nor the DOJ look for patterns in the actions taken by CRC.

9 Portland Copwatch wants the Court to take note of a few
10 cases where, as described by the agreement, CRC found some of
11 the Bureau's proposed outcomes unreasonable. Chief Outlaw
12 agreed when CRC found an officer was untruthful for telling a
13 citizen he could be arrested for video recording police.

14 In early 2019 the chief changed the allegation to be about
15 performance rather than truthfulness, which meant the officer's
16 discipline was minor, as opposed to termination. Copwatch only
17 learned about this by reading the December Police Review Board
18 report. This bait-and-switch discipline is a systemic problem
19 which allows the chief to undermine the trust of the community.

20 In May 2019 CRC made history. They brought a case about
21 retaliation to City Council for final disposition, having
22 suggested, unsuccessfully, that the chief attach a sustained
23 finding. The appellant in that case took photos and made a
24 face at an officer driving an armored vehicle. Rather than
25 engaging the appellant in dialogue, the officer had a

1 lieutenant issue her a jaywalking ticket. Based on the
2 officer's testimony, CRC found this was retaliation. Council
3 agreed to find the officer out of policy.

4 While the DOJ agreement requires the Bureau to prohibit
5 retaliation against people who file misconduct complaints, it
6 is unfortunate that neither report mentions this case.

7 In quarter four 2019, the time frame for COCL's report,
8 CRC heard a case in which they recommended a sustained finding
9 that an officer failed to do his duty when a woman tried to
10 report that her car was stolen.

11 Also, CRC sent a case back in December 2018 --
12 September 2018 for more investigation, and it came back in
13 February 2019. This case was involved -- involving the use of
14 force against a person in a 2017 protest and led the CRC to
15 recommend a debriefing because the force was in policy but was
16 not necessary.

17 Certainly, a table could have been generated to show how
18 many times CRC suggested findings were unreasonable, what the
19 outcomes were, how often they sent the cases back for
20 investigation, and whether that led to change findings.

21 Other places that Portland Copwatch finds the analysis
22 lacking include the once mandatory deadline of 180 days to
23 investigate misconduct was only met by Internal Affairs
24 94 percent of the time and 85 percent of the time by the
25 Independent Police Review.

1 To be fair, we agree that speed should not outweigh
2 accuracy; however, the question of whether the outcomes of the
3 cases are appropriate or build community trust is not
4 addressed. In fact, neither reviewing body appears to have
5 spoken with a single complainant about their experience.

6 It is not clear why the DOJ did not reference the case
7 called out by the COCL where a supervisor failed to properly
8 apply the discipline guide. COCL reports the supervisor
9 disagreed with a sustained finding and used that as a
10 mitigating factor in applying discipline. There is no mention
11 about whether that supervisor was held to account.

12 The DOJ report outlines a few cases that ran over the
13 180-day deadline, including one which sat in the chief's office
14 for 47 days. The DOJ claims that one anomaly -- anomaly is not
15 indicative of a larger problem; however, a string of them
16 across various requirements indicate the Bureau is not able to
17 live up to its obligations.

18 In terms of transparency, the COCL's report reveals that
19 presumably over the course of 2019 there were 42 concurrent
20 criminal and administrative investigations of officers. Even
21 if that includes all 13 deadly force incidents from the last
22 two years, an alarming 29 or more involved officers suspected
23 of criminal activity.

24 The public deserves to know more about these
25 investigations. The agreement empowers the Police Review Board

1 to send cases back for mandatory further investigation. The
2 COCL correctly points out this requirement is in policy but not
3 in city code, even though Council updated the code last August.
4 Codifying the change will prevent administrative changes
5 without Council oversight.

6 One final note about accountability. We noted in 2019
7 only 1 percent of force allegations have been sustained since
8 IPR began functioning in 2002.

9 Thank you.

10 THE COURT: Thank you, Ms. Hannon.

11 MS. HANNON: Yeah.

12 THE COURT: Mr. Parks, welcome.

13 MR. PARKS: Yes. My name is Peter Parks. I'm a
14 member of Portland Copwatch. I also work with a number of
15 houseless support organizations; although, I'm not representing
16 them here today.

17 So I'm speaking on community engagement and racial
18 profiling. The reports both give substantial compliance to the
19 Portland Community -- Committee on Community-Engaged Policing,
20 PCCEP, and its work; however, Portland Copwatch disagrees that
21 PCCEP has met or can meet the expectations outlined for them.

22 For example, the only real power they were given was to
23 pull forward policy reviews out of sequence if they feel they
24 need immediate attention. Not only has this never happened,
25 but PCCEP has rarely, if ever, commented on the policies

1 presented for public review. Moreover, this power is tempered
2 by the requirement the mayor and council have to approve the
3 PCCEP's review any -- any directors not related to the
4 agreement.

5 With regard to the stop data, the COCL claims the data
6 are, quote, designed to address concerns about discriminatory
7 policing, unquote.

8 What the COCL means is that the Bureau addresses concerns
9 by bending the data to claim that no discrimination is going
10 on. The COCL goes so far as to claim there is a, quote,
11 absence of racial ethnic differences in stops, unquote, even
12 though the data show 17 percent of traffic stops are of
13 African-Americans in a city that is 6 percent black.

14 The State of Oregon released a report showing the
15 disparity in Portland was the worst of all the jurisdictions
16 collecting data. I would like to repeat that. The COCL goes
17 so far as to claim there is an absence of the racial ethnic
18 differences in stops, even though the data shows 17 percent of
19 traffic stops are of African-Americans in a city that is
20 6 percent black.

21 The COCL again praises the Bureau for their supposed
22 in-depth analysis, which compares crime victimization rates to
23 traffic stops, as if being a victim of crime makes it more
24 likely that you are committing a traffic infraction.

25 The Bureau has no explanation why 17 percent of pedestrian

1 stops are also African-Americans. Even if one uses the
2 Bureau's benchmark of traffic accident data, which shows
3 13 percent of people in car crashes are African-American,
4 there's no explanation for the fact that there are 1.3 times as
5 many stops as crashes.

6 The COCL acknowledges, quote, disparities in searches for
7 black African-American drivers and pedestrians deserve more
8 attention. The only guidance they give for solutions are to
9 hope that the Bureau will explore reasons beyond the surface
10 and to use training to, quote, make officers more sensitive of
11 issues of bias and stereotyping, unquote. They can also say
12 stop over-searching people of color. They should do better to
13 halt this blatant racist profiling.

14 About community engagement, the COCL notes that they have
15 held town halls quarterly with PCCEP, which is true; but the,
16 quote, town hall to discuss this new report occurred at
17 4:30 p.m. on a Wednesday afternoon, during a PCCEP subcommittee
18 meeting, which does not make it easy for people working regular
19 hours to participate or to attend. Only about six community
20 members attended, and the Q and A period lasted less than
21 15 minutes.

22 As stated earlier, the preface to the agreement talks
23 about how the outcomes of the changes should build trust with
24 the community. We would argue that has not happened.
25 Regardless of whether all parties agree that the City is in

1 full compliance with the settlement agreement, the Portland
2 community demands a police force they can trust, as Dr. Haynes
3 said so clearly.

4 Part of that trust could come from true community
5 engagement through a body like the Portland Committee on
6 Community-Engaged Policing. At this juncture, the settlement
7 agreement has not done what it promised, and Portland has a
8 long ways to go to build trust, especially with the
9 African-American community.

10 As a community member, I would like to add that Portland
11 residents are concerned with outcomes. That has been mentioned
12 before today. Some examples are fair and impartial treatment,
13 accountability, trust, and minimal use of force. The
14 settlement agreement does not guarantee outcomes like these.
15 Our work has just begun.

16 THE COURT: Thank you, Mr. Parks.

17 Ms. McAuley, welcome.

18 MS. MC AULEY: Hello, Your Honor. My name is
19 Jocelyn McAuley. I'm a participant with Portland Copwatch. I
20 have the final comments from Portland Copwatch here. I'll
21 address other public engagement and training. COCL claims that
22 PCCEP, quote, has the authority to hold PPB accountable for
23 tactics and strategies linked to public trust, end quote. The
24 COCL's report also, quote, trusts that PCCEP will ensure the
25 community engagement plan meets the expected outcomes of public

1 involvement communication, access to police services and
2 training; however, it is not clear how this alleged authority
3 will work.

4 We wish to note that PCCEP is required to put out
5 quarterly reports, but the COCL only mentioned two being
6 prepared in 2019. In March and July.

7 Additionally, only three will -- corrected today, only two
8 of the original 13 members, as has been noted, of the PCCEP
9 remain on the committee. In addition to those resignations by
10 full members, a fair number of alternatives have also removed
11 themselves from this process before they were even seated.

12 Portland Copwatch wants to highlight our concern that the
13 role of a PCCEP staff community organizer has not been filled,
14 and according to the COCL report, which is in contrast to what
15 has been stated here today, the report states that the PCCEP is
16 not sure that they want one. Given that the group is all
17 volunteer, we hope that they will push for a community
18 organizer, as was stated today. This will help with outreach
19 engagement, plus beneficial would be a person with statistical
20 know-how to continue compliance checks.

21 As an additional note, with regard to the community
22 engagement plan, Copwatch points out that the word
23 "accountability" itself does not appear anywhere in the plan,
24 and the plan hadn't been changed to include this.

25 The DOJ notes that precinct demographic data are available

1 on the PCCEP website, but the Bureau sharing those data with
2 PCCEP is meaningless if there's no discussion of what that data
3 means.

4 Copwatch wants to reemphasize that officers should not
5 make stops or hand out tickets as their form of community
6 engagement. Rather, the Bureau should be clear that when law
7 enforcement actions occur, the behavior of the officer matters
8 in the same way it does during nonenforcement encounters.

9 Both the DOJ and the COCL credit the Bureau for getting
10 the 2018 annual report drafted by July of 2019, then holding
11 required meetings in each of the city's three precincts and at
12 City Council. However, there was no public announcement of the
13 first meeting. There was only one day's notice for the second
14 meeting, and there was eight days' notice for both the
15 Central Precinct and Council meetings.

16 A community member who attended one precinct event had
17 reported a low turnout and the police only wanting to talk
18 about what affected their area.

19 Also because of Mayor Wheeler's blanket policy against
20 taking public testimony on reports, the public was only able to
21 comment on the annual report at Council because it was heard
22 along with the community engagement plan. We find it is not in
23 the spirit of the agreement to hold meetings where the public
24 isn't invited or isn't invited to provide feedback.

25 On the topic of training, the COCL claims that finding out

1 how officers apply their training on the streets can be
2 revealed through auditing force incidents but acknowledges that
3 more information is needed. They use, as an example, the
4 Bureau's contact survey, which found that, quote, "Officers
5 were respectful, fair, and compassionate," end quote. However,
6 we wish to highlight that the survey was only for reported
7 crime victims. This was not people who were pulled over or
8 cited or arrested. Therefore, those results are not
9 comprehensive.

10 With regard to the Training Advisory Council, TAC, the
11 COCL reports that the Bureau has accepted TAC's recommendation,
12 that the PPB must respond to their recommendations within
13 60 days. They do not note, however, that one suggestion, which
14 took over six months to prompt a reply, asked for demographic
15 data to be included in quarterly force reports. This was to
16 contrast who was having force used on them versus who lives in
17 Portland.

18 As has been stated earlier, this refers to the 25 to
19 31 percent of people subjected to force being African-American
20 in a city that is 6 percent black.

21 The Bureau ultimately refused to adopt the TAC's
22 recommendation, even if the reports were to ask people to
23 compare the ratio of force used to persons taken into custody.
24 That disclaimer would raise the question of why so many
25 African-Americans are taken into custody by police.

1 In conclusion, the DOJ's report seems to sputter out with
2 no real conclusion, despite the issues at stake, and finding
3 the City in substantial compliance. Perhaps the DOJ recognizes
4 that they're leaving the city of Portland in only slightly
5 better shape than nearly nine years ago when they began their
6 pattern and practice investigation.

7 Portland Copwatch remains deeply concerned that the focus
8 of the people managing the agreement is whether or not the PPB
9 has in place training policies and data-tracking practices, not
10 whether there's trust that is built in the institution which
11 purportedly protects and serves the community.

12 As you have heard today, there's still a lot of
13 Portlanders, especially our black Portlanders, our communities
14 of color, and our neighbors with mental health issues, who
15 hesitate before calling the police, as they fear the outcome
16 would be someone getting killed rather than helped.

17 Thank you for your time.

18 THE COURT: Thank you, Ms. McAuley, and thank
19 Portland Copwatch for its contributions.

20 MS. MC AULEY: Thank you.

21 THE COURT: Before we take our lunch break, I would
22 like to hear from Nancy Newell, Debbie Aiona, and
23 Shawn Campbell.

24 MS. NEWELL: Wow.

25 THE COURT: Now it's good afternoon.

1 MS. NEWELL: Okay. It's a long walk when you're an
2 antinuclear activist. And in this town, I could put in jail
3 every elected public official because they're required, by a
4 public vote 13 years ago, to close that old nuclear plant that
5 causes mental illness. And if you eat the fish, forget about
6 it. You're going to get cancer, so you'll die young. Our
7 children don't have a chance to learn in schools. I mean,
8 people in very important positions overlook a -- some of the
9 main serious causes of things that are trying to be dealt with
10 by yourself, by the police. Some are really good people and
11 trying to do their work; but yet we are overwhelmed with the
12 technology that Chancellor Merkel, when she came into office --
13 she's a nuclear scientist -- closed four nuclear plants like
14 this plant, and it's required to be closed by the public for 13
15 years here.

16 So who is mentally ill? What do we mean by "mental
17 illness"? My mother was a city treasurer of our town for
18 16 years. Popular elected. And the male city manager took her
19 job away. And she said, "He's going to steal a million dollars
20 in a year," and he did. They had paid her, with six children,
21 \$75 a month throughout her whole career. They gave her \$75 to
22 come back and fix the books and never gave her back her
23 position. He blended the position, but they got rid of that
24 guy.

25 But what I'm trying to point out is that it's so difficult

1 for the public. And I have been through that nuclear power
2 accident, and I have seen how there's this response of a lack
3 of credibility of the horror of our responsibility, as dropping
4 nuclear weapons and not stopping the plants that produce the
5 waste for these nuclear weapons, or reduce these nuclear
6 weapons, and at the same time we expect our public to be
7 mentally balanced. It doesn't make sense to me because that
8 radiation causes mental illness.

9 So let's get to the point where we openly talk about all
10 the different aspects. That's what I would like to see in
11 these discussions.

12 And I really plan to arrest the elected officials. I'm
13 looking for a lawyer to do so. It's called a citizen's arrest.
14 I have every right to do that. I've been labeled a communist.
15 I've been labeled all kinds of things throughout this state,
16 and I'm going to continue with the different variety of efforts
17 to close these plants. And the mental health will, I guarantee
18 you, improve dramatically.

19 Thank you.

20 THE COURT: Ms. Newell, before you leave, I -- I'm
21 reluctant to give you legal advise, so I'm not going to give
22 you legal advice --

23 MS. NEWELL: Yes.

24 THE COURT: -- but I'll share with you a personal
25 story.

1 A couple of weeks ago some people came to this building to
2 make a citizen's arrest of me, not to do with this case, as far
3 as I can tell. The marshals went down and spoke with them. So
4 did, I believe, the lead representatives from the U.S.
5 Attorney's Office. Before you do anything like that, speak to
6 a licensed lawyer and find out what are your rights but also
7 what are your obligations.

8 MS. NEWELL: Yes.

9 THE COURT: It is not necessarily a smart move --

10 MS. NEWELL: Right.

11 THE COURT: -- to make a citizen's arrest of a public
12 official.

13 MS. NEWELL: Well, I've been trying to find a lawyer,
14 and that's a tough one.

15 THE COURT: Well, keep -- keep looking for good legal
16 advice before you take anything --

17 MS. NEWELL: And I'm still going to all the testimony
18 and putting it in a legal record.

19 THE COURT: Okay. Thank you for your appearance
20 here.

21 Ms. Aiona and then Mr. Campbell or Ms. Campbell. I'm
22 sorry. Debbie Aiona and Shawn Campbell.

23 I will tell Ms. Aiona I have received and read the letter
24 from you and Ms. Kaye from the League of Women Voters of
25 Portland, and I thank you for that.

1 MS. AIONA: Thank you, Your Honor. Thanks. I'm
2 Debbie Aiona, representing the League of Women Voters of
3 Portland. The League has actively monitored the City's Police
4 Bureau for decades, with the focus on public participation,
5 transparency, policy development, and accountability. We
6 regularly attend PCCEP meetings and appreciate the committee's
7 focus on issues of importance to the community.

8 We recognize that the compliance officer and DOJ have
9 found the City to be in substantial compliance with the
10 agreement. We are encouraged, however, to hear that you are
11 open to continuing your oversight. We have questions,
12 concerns, and suggestions to share with you. The PCCEP and
13 public benefit from the presence and participation of key
14 police bureau leaders and city staff at the monthly meetings.
15 They also benefit from hearing the committee's and public's
16 concerns and ideas for improvement. We appreciate the Mayor's
17 stated commitment to maintain and support the PCCEP over the
18 long-term but wonder if PPB and city staff will continue to
19 participate once the DOJ is out of the picture.

20 The League thinks the PPB and community will benefit from
21 the continuation of the oversight function in a different
22 forum. We suggest the City consider creating a compliance
23 officer position based in the PCCEP office. This individual
24 could provide analysis and oversight, recommend improvements,
25 and with its base at the PCCEP office, have a close connection

1 to the public.

2 The years of consistent involvement from the compliance
3 officer and DOJ have been valuable. They brought a level of
4 transparency, public interaction, and critical
5 behind-the-scenes oversight never seen before. We would like
6 to know how the Bureau and City plan to follow up on that
7 progress and work towards the transformation the public
8 desires.

9 As indicated by the substantial compliance ratings, the
10 settlement agreement resulted in improved training, new systems
11 to track data and progress and updated policies. Many
12 community members expected that DOJ oversight and involvement
13 would lead to a transformation of our police bureau. Although
14 some progress has been made, more needs to be done.

15 As an example, the Bureau tracks and regularly reports on
16 evidence of disparate treatment of communities of color.
17 Thanks in part to the DOJ presence, we have more information
18 about the problem, but have yet to see a plan to remedy it.

19 The compliance officer and DOJ did not devote a lot of
20 attention to the IPR Citizen Review Committee. It is a
21 critical safeguard for community members experiencing possible
22 police misconduct. Regular observers, including the League,
23 have become increasingly concerned about its ability to
24 function effectively.

25 Recently, two well-respected members, including the chair,

1 resigned in frustration. The League believes the CRC is key to
2 the success of our civilian oversight system and deserves to
3 have the City address its concerns.

4 The Community Engagement section of the agreement requires
5 the Bureau to present its annual report in each of the three
6 precincts and before City Council. I joined a handful of
7 community members at the East Precinct meeting. The commander
8 provided highlights specific to that precinct and responded to
9 questions.

10 In our view, this was a missed opportunity. Bureau
11 leaders should use the annual report to describe
12 accomplishments and challenges, evaluate performance, share
13 plans for the future, and, most importantly, hear from the
14 public. Because public testimony on reports is generally not
15 allowed at City Council, the precinct meetings are the public's
16 only avenue for responding to this report.

17 Engaged community discussions are crucial for a
18 functioning democracy and an accountable police bureau. Unless
19 the public receives better notice of the precinct meetings, the
20 presentations are improved to include a citywide overview and
21 incorporate opportunity for community feedback. We do not see
22 how the City could be found in this compliance with this
23 paragraph.

24 Finally, the League's concerns are a strong indication of
25 our apprehension over what to expect once the DOJ is no longer

1 monitoring and offering guidance to the PPB.

2 We believe creation of a position for a locally based
3 compliance officer located in the PCCEP office and your
4 continued oversight will provide some level of reassurance that
5 the transformation initiated by the agreement may some day be
6 realized.

7 Thank you.

8 THE COURT: Thank you, Ms. Aiona. Thank you for all
9 the work that the League of Women Voters of Portland does.

10 MS. AIONA: Oh, thanks.

11 THE COURT: Our final public commenter and our final
12 speaker before our lunch break is Shawn Campbell.

13 Welcome, Mr. Campbell.

14 MR. CAMPBELL: Thank you. The fun of being the guy
15 right before lunch.

16 My name is Shawn Campbell, and I'm the chair of the
17 Training Advisory Council for the Portland Police Bureau. I am
18 not here speaking on behalf of the TAC. We do not have an
19 official position on this hearing.

20 The TAC has been around since 2012, and during that time
21 we have regularly continued to do our mission. I kind of
22 consider us kind of a model of success as far as a group that
23 is mandated by the City to deal with the police.

24 Overall, I would like to start by saying I think we have a
25 very good relationship with the training division. We have a

1 lot of mutual respect, and I think that the world we see --
2 live in today is very different than what we lived in ten years
3 ago, and the police force we see ten years from now is going to
4 be very different. We're very long-term thinkers in training.

5 As we approach the end of this settlement agreement,
6 whether it's extended now or whatever happens, I think one of
7 the concerns that's repeated by the community again and again
8 is what happens afterwards. Are a lot of these things going to
9 stick around, or are they going to disappear?

10 And I guess one of the concerns that I have as a leader of
11 a group was dealing with some recommendations that we had that
12 went unanswered for a long period of time.

13 In March of last year, we made some recommendations
14 about -- including demographic data. I don't need to go into
15 the details of, it because it's not germane to this situation,
16 but let's just leave that it was contentious between us and the
17 Bureau about whether or not to include it.

18 We did not hear anything back from the Bureau for over six
19 months. During that time, every time we had a meeting, we were
20 told that it was at the chief's office and things were going to
21 happen. It never did.

22 Finally, it came down to after our September meeting, I
23 finally went to a PCCEP meeting on October 23rd, where
24 afterwards I spoke to the head of COCL about it. The next day
25 we got a call from the chief, and we got the details that we

1 had been waiting for.

2 When we looked at the documents, the responses had
3 actually been written in mid-August, and the cover letter to
4 those documents had been written in mid-September, but yet we
5 didn't receive it until mid-October.

6 Reasonably, I don't know -- you know, I'm not privy to
7 what happens within the Bureau or the thought processes, but
8 personally I don't think we would have gotten an answer if I
9 hadn't talked to COCL, which kind of brings up the issue of
10 once this is gone and COCL is gone and the DOJ is gone, who are
11 we supposed to talk to when we -- this gets ignored?

12 Now, at this time the Bureau has -- we changed our bylaws,
13 and the Bureau has shown -- has told us this isn't going to be
14 an issue again, but until we actually have proof of that,
15 because I'm a person that believes in actions over words, I'm a
16 little hesitant to believe anything until action actually
17 happens.

18 One of the things that kind of strikes me, listening to
19 everybody, because I didn't initially plan on talking today,
20 was that there is a general feeling of -- that this needs to
21 get done. It's obvious that the City wants this to get done.
22 It's obvious the Bureau wants to get this done, and I think
23 even the DOJ wants to get this done.

24 However, I think, just looking at it that way, kind of
25 ignores some of the issues PCCEP has, just because it's such a

1 new organization. I think realistically we have to remember
2 that COAB, the initial plan of what this was supposed to be,
3 collapsed. And as a result, we had to create PCCEP just -- and
4 it's only about a year old at this point.

5 So looking at our own history at TAC -- we were created in
6 2012 -- we didn't even make a formal written recommendation
7 until 2015 because it took that long to build our structure, to
8 build how we were going to do things so that when we did things
9 there was actually a structure and a process to it.

10 So I guess one of the things I would kind of leave with is
11 maybe it's one of those things where we need to slow down a
12 little bit and give PCCEP the time to actually do what it needs
13 to do instead of just rushing this because we want to get it
14 done.

15 Thank you.

16 THE COURT: Don't go away yet. I appreciate very
17 much your comments, Mr. Campbell, and your insights. One of
18 the comments that you made was that policing ten years ago
19 looked very different from the way it looks now, and then you
20 said policing ten years from now will likely look very
21 differently than it does today. In what way?

22 MR. CAMPBELL: Well, I think, some of the big things
23 we're seeing today that we're initially starting in training
24 are things such as implicit bias training. Emotional
25 intelligence training is at its infancy right now. The ideas

1 of procedural justice where how do we communicate with members
2 of the public, as far as Bureau officers, and just in general,
3 even starting wellness programs. All these things that kind of
4 attack different segments of these problems. The thing is,
5 though, these are long-term solutions. You're not going to
6 start a wellness program and everything is going to be
7 hunky-dory the next year. You have to go through the entire
8 changeover.

9 It actually probably takes a bit of older officers
10 retiring and newer officers who were trained in this kind of
11 stuff in the beginning come in. That's when we actually get
12 change. It's a big ship we're turning, and to expect it to
13 turn immediately I don't think is reasonable.

14 THE COURT: Thank you, Mr. Campbell. I appreciate
15 your insights and your expertise. Thank you, sir.

16 MR. CAMPBELL: Thank you.

17 THE COURT: Mr. Geissler and Ms. Reeve, am I correct
18 that you all want about 30 minutes for a recess? More or less?
19 What's your preference?

20 MR. GEISSLER: I'm sensitive -- excuse me,
21 Your Honor. I'm sensitive to the needs of the public that
22 might come back through security as well. Is half an hour
23 sufficient for them to get back in?

24 THE COURT: If you're asking me, the answer is "I
25 don't know."

1 MS. REEVE: I agree with Mr. Geissler, Your Honor. I
2 think we would be fine with 30 minutes, but I do want to be
3 sensitive to people who are attending and may want to get
4 something to eat.

5 MR. GEISSLER: 45 minutes, please, Your Honor.

6 THE COURT: Done. That will be fine. 45-minute
7 recess.

8 And then you can tell me, when we get back, in what order
9 you all wish to make presentations. I will defer to you
10 whatever form you all want. 45-minute recess.

11 (Lunch recess taken.)

12 THE COURT: Good afternoon. During the lunch break,
13 I did receive additional written testimony. This was from
14 Mr. Elliott Young, a PCCEP member, and I thank him for
15 submitting that testimony.

16 All right. Mr. Geissler or Ms. Reeve, or anyone else?
17 Who's going? Mr. Hager?

18 MR. HAGER: Thank you, Your Honor. Jared Hager, with
19 my colleague, Jonas Geissler, for the United States.

20 At the outset, I need to remind the Court and the public
21 that the day-to-day work on this case is managed for the United
22 States by the career attorneys of the Department of Justice.
23 We aren't driven by personal creed or political ideology. Like
24 Your Honor, we have taken an oath to uphold the rule of law,
25 and we're committed to faithfully monitoring the City's

1 compliance with the settlement agreement.

2 Our compliance ratings reflect thousands upon thousands of
3 hours of work put in by us, our colleagues, and our expert
4 consultants.

5 This afternoon I think we would like to address two
6 issues. First, we would renew the joint motion to amend the
7 settlement agreement by substituting the Portland Committee on
8 Community-Engaged Policing, or PCCEP, for the Community
9 Oversight Advisory Board, COAB; second, we'll summarize our
10 interim compliance reports on Section 8 and Section 9 of the
11 agreement. That's accountability and community engagement.

12 Mr. Geissler will address Section 8 in a moment, as well
13 as next steps.

14 I'll start with Section 9 and the PCCEP amendment, which
15 the Court conditionally approved, pending further assessment of
16 its adequacy. First, some important aspects of the agreement
17 are often overlooked in bare mention. First, the agreement
18 didn't envision the federal government permanently overseeing
19 the City of Portland or its police bureau. In fact, it
20 anticipated the agreement lasting five years, and that's
21 paragraph 175A.

22 Second, the agreement binds the City, its bureaus, and its
23 employees, not private hospitals, not the State or County, not
24 other police departments, and certainly not the PCCEP or its
25 members. For example, where the agreement requires the City to

1 provide the PCCEP with certain authority and certain data, the
2 City's compliance doesn't necessarily turn, in our view, on
3 what the PCCEP does with that.

4 And I would reference paragraph 147 and 148 where there's
5 been some community concern over how the PCCEP has conducted
6 its business.

7 Third, the agreement represents a floor, a foundation, and
8 not a ceiling. It doesn't demand perfection; although, that's
9 its aspirational aim.

10 In fact, the agreement defines substantial compliance and
11 what substantial compliance looks like, and that is that it
12 allows minor or occasional deviations that aren't systemic.
13 And I'll reference paragraph 175A.

14 Fourth, the agreement provides that the United States is
15 the monitor and decides when and whether the City is in
16 substantial compliance. We appreciate and acknowledge the
17 concerns of the community and Your Honor's concern of whether
18 or not substantial compliance is something you agree with, but
19 the agreement, which the Court has already deemed fair,
20 adequate, and reasonable, makes the United States the monitor.
21 And I'll reference paragraphs 164, 175, and 176.

22 THE COURT: I think you're correct, but I also note
23 that the United States has previously expressed the position
24 that back when we had the COAB provisions before us, that the
25 City was not in compliance with those COAB provisions.

1 MR. HAGER: That's correct, Your Honor. And the
2 agreement also provides that when the United States sees that
3 there's a non-compliance, it provides a very detailed process
4 of mediation and conferral with the City to try to overcome
5 issues of non-compliance. In this case, that's exactly what
6 the parties did in coming up with PCCEP provisions as a way to
7 get around unforeseen obstacles.

8 THE COURT: I totally understand, and I think we're
9 on the same page.

10 As you know, though, I have not yet determined that that
11 proposed amendment is fair, reasonable, and adequate; but I
12 think we're on the same page.

13 MR. HAGER: Understood. And I think if Your Honor
14 rejected the PCCEP amendment, it would put us back in that
15 mediation process to try to figure out a new solution to
16 overcome those obstacles. It would be a very costly decision
17 and one at this point we would think inequitable and
18 disproportionate to perceived shortcomings in the PCCEP
19 process, given the substantial amount of energy, time, and
20 money that the City, the Department, and the volunteers have
21 invested into the PCCEP process.

22 THE COURT: I understand.

23 MR. HAGER: If it's broke, it's not that we don't
24 want you to adopt the amendment. We would want to fix the
25 broken parts.

1 Now back to the PCCEP amendment.

2 We ask that the Court grant final approval for three
3 reasons. First, the amendment is fair, adequate, and
4 reasonable on its face; second, the PCCEP has demonstrated its
5 adequacy and practice; and, third, the City is substantially
6 complying with the terms of the PCCEP amendment in sustaining
7 such compliance.

8 First, and we previously stressed this at every status
9 conference on this amendment, the PCCEP amendment is a facially
10 adequate substitute for the original COAB requirements, and we
11 believe that's the proper standard. The PCCEP retains the
12 COAB's defining characteristics of authority, independence, and
13 City support and improves on the COAB by separating the body's
14 existence from the settlement agreement's limited lifespan and
15 the compliance officers' attenuated control.

16 The PCCEP, thus, provides the greatest chance of a lasting
17 framework for community-involved policing.

18 The Court's conditional approval and its direction to
19 implement the PCCEP as if it had final approval, demonstrates
20 the facial adequacy of the stipulated amendment. For two years
21 now, Your Honor has acknowledged the PCCEP's promise and
22 encouraged the City to continue materially supporting the
23 PCCEP. This shows, in our view, that the amendment absolutely
24 cannot be facially inadequate, facially unreasonable, or
25 facially unfair.

1 Quite the opposite. This history tells us that at this
2 stage, with the City fully invested in the PCCEP's success,
3 with volunteers having devoted substantial time and energy to
4 fulfill the PCCEP's mission, granting final approval of the
5 amendment is warranted.

6 Second, the PCCEP has demonstrated its adequacy in
7 practice. Before the last status conference, the
8 enhanced-amicus, Albina Ministerial Alliance Coalition for
9 Justice and Police Reform, offered an alternative measure of
10 adequacy. One based not on the terms of the amendment, but on
11 the PCCEP's performance of them in practice. This measure has
12 been met too.

13 As outlined in our compliance reports, the PCCEP continues
14 to hold regularly scheduled three-hour long monthly public
15 meetings. Meetings are scheduled for the fourth Tuesday of
16 every month at accessible locations across Portland, and we
17 invite everyone to come and participate.

18 The PCCEP's five subcommittees have collectively held
19 dozens of open public meetings, and community members can join
20 any subcommittee where recommendations take shape.

21 I'll note that we acknowledge a lot of the concerns that
22 have been raised by the League of Women Voters, the amici
23 groups, and other members of the public. Many of these go to
24 what the PCCEP is doing. And, Your Honor, if everyone brings
25 their concerns to you in the first instance, instead of taking

1 them to PCCEP -- for example, the Mental Health Alliance is
2 upset that they don't have a full roster and they don't have
3 members' email addresses. That's a simple request to city
4 staff, and it's fixed like that.

5 As long as Your Honor retains oversight, problems are
6 going to be told to you first instead of the PCCEP. We see
7 that as hampering the effectiveness of the PCCEP mission.

8 THE COURT: At the end of this -- at the end of your
9 comments and the City's comments, I will give an opportunity,
10 of course, to Mental Health Alliance and to AMA to offer any
11 additional comments they wish, but I am -- I'll let them know
12 now, I'm curious to what your response is to that last comment.
13 But we'll get there when we get there.

14 MR. HAGER: As another example, the League of Women
15 Voters is concerned about the annual report and the precinct
16 meetings. The annual report was discussed at three separate
17 PCCEP meetings, full public meetings where the city staff and
18 police officers and command staff were present, and those
19 concerns could be raised there. The PCCEP has always been
20 willing to take recommendations from the community and pass
21 those along and get the response that's necessary.

22 Each of these meetings has public comment and further
23 advances the PCCEP's mission, and the City continues to give
24 the authority, the independence, and the material support
25 necessary for the PCCEP to bridge divide between law

1 enforcement and the community and enhance trust.

2 The PCCEP has a direct line of access to city leaders
3 within the Mayor's office, the police bureau, and the Office of
4 Equity and Human Rights. They engage relevant groups, but
5 meetings are two-way streets. If the amici don't come to the
6 meetings, I just hesitate to put that on the PCCEP members.

7 The PCCEP acts deliberately in crafting recommendations
8 for policing. They serve as a conduit for community concerns
9 as it relates to compliance with the settlement and policing
10 more generally. The PCCEP and its subcommittees continue to do
11 good work on behalf of all Portlanders, and they've earned the
12 Court's final approval.

13 Third, the City has demonstrated its commitment to PCCEP
14 by substantially complying with the terms of the amendment,
15 notwithstanding the very real possibility of rejection, which
16 is a very costly possibility.

17 At the last status conference, the Court indicated its
18 measure of final approval equates adequacy with substantial
19 compliance for some period of time. And, again, I remind the
20 Court that the agreement provides that the United States is the
21 monitor.

22 This measure has also been met.

23 In May of 2019 the United States reported that the City
24 was in substantial compliance with nine of the 12 provisions of
25 Section 9. By October, the City had substantially complied

1 with all 12 paragraphs and they're continuing to substantially
2 comply. The City's endowed the committee with the broad
3 mandate, the flexibility to set its own agenda, and a life
4 beyond the settlement agreement. There's a lot of push and
5 pull in some of the community concerns. We have heard it's too
6 expensive, but we want it to keep going -- the settlement
7 agreement. The settlement agreement -- the PCCEP is too
8 focused on racial issues. We want them to focus on mental
9 health issues. But then they're not focusing on the stops data
10 in developing recommendations to resolve biased policing.

11 This push and pull is very difficult for a volunteer group
12 of members to come to grips with. It's difficult for me to
13 come to grips with which -- which way to give technical
14 assistance for the PCCEP to engage properly with all of the
15 concerns that have been raised.

16 Again, they're volunteer members, and anyone is welcome to
17 join a subcommittee to help the mission. And I would encourage
18 everyone here who has a concern to join a subcommittee and help
19 craft recommendations.

20 The City's invested hundreds of thousands of dollars and
21 thousands of hours of labor to support the PCCEP, including
22 dedicated administrative staff, contractor services, training,
23 technical assistance, office and meeting space, catering, and
24 monthly stipends for members.

25 Again, I remind the Court and the public that we evaluate

1 the City's compliance, not the PCCEP's individual members'
2 compliance. I think Your Honor is aware of the Supreme Court
3 case law that says consent decrees that bind nonparties are
4 void. So we're not trying to, you know, determine compliance
5 based on volunteer members, 50 percent remaining engaged for a
6 year. That's not a workable process.

7 THE COURT: I also note, too, that this is not a
8 consent decree. Right? It's a settlement agreement.

9 MR. HAGER: That's true.

10 THE COURT: I think one, among many things, that we
11 should learn from this experience is probably a settlement
12 agreement is not the best way to proceed in these types of
13 problems. But I do recognize it's a settlement agreement, not
14 a consent decree; so what you just said about a consent decree
15 only has sort of limited applicability to a settlement
16 agreement.

17 MR. HAGER: Courts have interpreted them similarly.

18 THE COURT: But there are some significant
19 differences too.

20 MR. HAGER: For sure. And we acknowledge that.

21 We also acknowledge the concerns raised by the community
22 members and that PCCEP is not perfect, that there's definitely
23 room for improvement, but it continues to build capacity and
24 progress toward the substantive goals. And we believe the
25 trust, like hope, should not be viewed in a binary fashion, but

1 on a continuum, and we continue to believe that the PCCEP is
2 moving the needle in the right direction.

3 In sum, the PCCEP amendment is fair, reasonable, and
4 adequate on its face. In practice, the PCCEP is capably
5 exercising its authority and independence, and we respectfully
6 ask the Court to approve the amendment.

7 And with that, I'll turn it over to Mr. Geissler.

8 THE COURT: Good afternoon, Mr. Geissler.

9 MR. GEISSLER: Good afternoon, Your Honor. May I?

10 THE COURT: Wherever you wish.

11 MR. GEISSLER: If it please the Court, Your Honor, I
12 would like to address briefly Section 8, with respect to
13 accountability, not because it was part of the prepared
14 remarks, but rather some of this morning's comments had to do
15 with it. Then I would like to address the Court's question of
16 next steps going forward.

17 THE COURT: Excellent.

18 MR. GEISSLER: The United States released a report
19 that stated as of January 10, 2020, the City had come into
20 substantial compliance with Section 8, then formally the entire
21 settlement agreement. This is a substantial milestone for the
22 Portland Police Bureau and the City's progress, but it is
23 continual progress.

24 The City must still maintain that substantial compliance
25 for a year. And as we have told this Court before, the reason

1 that the United States requires periods of sustained
2 substantial compliance in our consent decrees and settlement
3 agreements is so that we can ensure the remedy is durable. The
4 remedy must be durable when we leave.

5 With respect to Section 8, the accountability, Your Honor
6 will recall that the City had come close to substantial
7 compliance when we had submitted our May 2019 report and had
8 our June 2019 status conference. There were two areas for
9 which the City had not yet achieved substantial compliance in
10 Section 8.

11 PPB and IPR had implemented long-term -- long-planned
12 changes to the accountability system with respect to policies
13 and dual training for both IPR and Internal Affairs, or IA,
14 investigators, such that wherever an accountability
15 investigation was conducted, one would expect a similar outcome
16 where appropriate. The systems mirrored one another. The
17 state investigative processes were followed, and the same
18 standards of evidence applied and the same burden applied to
19 the findings that resulted.

20 This should result in a more fair end reception of
21 procedural justice, both inside and outside the organization,
22 for members of the police bureau that are subject to the
23 complaints and members of the public that submit the
24 complaints.

25 The two areas that kept the City from reaching substantial

1 compliance were, one, the timeliness of administrative
2 investigations; and, second, the incomplete administrative
3 investigations that were involved with the Bureau of Human
4 Resources, BHR. Part of City but a different agency than the
5 police bureau.

6 As to the first issue in this assessment period, the City
7 did achieve substantial compliance with the 180-day deadline
8 for completion of accountability investigations, whether or not
9 they began and were connected with IPR or with IA. But we
10 assessed not just timeliness. We also assessed the quality of
11 investigations to ensure that the City did not sacrifice
12 efficacy on the altar of expediency.

13 PPB and IPR continue to complete investigations that we
14 found from our sampling of all the investigations -- complete
15 the investigations to meet a preponderance of evidence
16 standard. The City continued to seek on-scene public safety
17 statements when necessary and to have officers provide
18 on-scene -- witness officers provide on-scene walk-throughs at
19 critical-force incidents, and that's before PPB issued
20 communication restriction orders. The other areas of the
21 accountability section did not backslide in the name of
22 expediency either.

23 There was one small area where we had issued technical
24 assistance. The community -- excuse me -- the system review
25 committee, the CRC, didn't have members on all of the PRBs that

1 would be in force during this compliance period. Even though
2 we didn't find them noncompliant, the City met that technical
3 assistance and amended their city code to ensure the their CRC
4 members are on all force incidents were reviewed by PRBs.

5 On the second issue, we also assessed the BHR
6 investigations that had previously been incomplete. In
7 completing their investigations, demonstrate that the City is
8 still substantially compliant with the anti-retaliation
9 provisions of paragraph 130. That's accountability, and it
10 addresses, in part, the concerns of the accountability system
11 overall.

12 But Your Honor asked specifically what should we do for
13 next steps, and, Your Honor, the most pressing next step is
14 approval of the PCCEP amendment, not because of all the factual
15 and legal arguments that Mr. Hager, my colleague, has set
16 forth, but because, ultimately, it's self-defeating to ask the
17 volunteers to come forward and to work when they do not know if
18 the rug will be pulled out from underneath them and there will
19 no longer be a PCCEP.

20 It is self-defeating with respect to attrition, and we
21 need to make sure that that amendment is carried through.

22 THE COURT: Do you have any evidence at all that any
23 of the attrition that we have seen on the PCCEP is due to the
24 fact that I've not given final approval?

25 MR. GEISSLER: No, Your Honor. That's an important

1 distinction on the evidence and really is where I was headed
2 next.

3 We heard statements today from the SPMI members who said
4 that they had felt demoralized. I'd commend Your Honor to
5 their statements, but I won't call them testimony and I won't
6 call them evidence. Your Honor, I commend to your attention
7 one of my section's prior cases. United States v. Tennessee
8 Western District of Tennessee, 92-2062. In that case, a
9 25-year case, we came up with situations like this where we
10 needed to overcome problems in an original remedial order. We
11 reached immediate settlement agreement, had a fairness hearing,
12 and Her Honor, in that case, accepted letters from outside of
13 the Court into evidence to consider where -- whether or not the
14 immediate settlement agreement was fair, reasonable, and
15 adequate.

16 The Sixth Circuit overturned her on it because it is not
17 evidence and it is not of record to allow individuals to make
18 the Court's -- persuade the Court as to fairness,
19 reasonableness, and adequacy.

20 We have set forth, on record, the fairness,
21 reasonableness, and adequacy, both on its face in assistance
22 and in argument. That should lead the Court's determination on
23 the next step.

24 THE COURT: I understand what you're saying. And
25 maybe I wasn't clear in my question because I'm not accepting

1 anything that was said as evidence, per se, but I will tell you
2 that I am skeptical that my only giving conditional approval
3 and not final approval to the PCCEP amendments would in any way
4 contribute to any attrition problems, to any demoralization
5 feelings, anything at all like that. I'm skeptical.

6 I'm also sufficiently humble that I don't necessarily
7 agree that my skepticism is absolutely going to be the correct
8 answer. So would you like an invitation to submit, in an
9 evidentiary -- evidentiary appropriate fashion, any evidence
10 that will inform that question one way or the other, mainly
11 whether or not only having conditional approval, rather than
12 final approval, is somehow interfering with the success of the
13 PCCEP?

14 Would you like that opportunity? If so, I will give it to
15 you.

16 MR. GEISSLER: I believe the United States has
17 presented its basis for the motion already and that the motion
18 should carry based upon the record established thus far.

19 THE COURT: I'll take that as a, no, thank you; but
20 okay.

21 MR. GEISSLER: I will take my own humility as well.

22 MR. HAGER: Your Honor, I would just like to direct
23 you to the comments I had just mentioned where the amici and
24 the members of the public continue to raise issues as first
25 impression to this Court instead of taking them to PCCEP.

1 We believe that that is evidence that the PCCEP's trust
2 and legitimacy in the community is impacted. Your Honor is the
3 person of first resort, not the PCCEP.

4 THE COURT: All right. That's a fair point. So I
5 look forward to hearing from the Mental Health Alliance and the
6 AMA Coalition whether they have taken or refrained from taking
7 any actions because the PCCEP has not received final approval
8 but only conditional approval.

9 So we'll get to the bottom of that. Thank you.

10 MR. GEISSLER: Your Honor, if I may round out for the
11 next steps thereafter. Your Honor had mention the possibility
12 of a further status conference within six months. We believe
13 that the status conference in six months would be acceptable;
14 however, Your Honor, in response to a question from -- or a
15 comment, rather, from Mr. Handelman, he alluded to a political
16 situation: The inauguration date in January. We have, on
17 record, a compliance report that states compliance based upon
18 facts. January 10, 2020, was the date of the last piece of
19 evidence. That was the date with which we found compliance.
20 We are honest brokers. We are career staff. We are not
21 political appointees. The facts dictate when this case should
22 be over. And as Mr. Hager pointed out in paragraph 176, once
23 the City has maintained substantial compliance for one year,
24 this case should be done. That would come January 10, 2021, if
25 the facts dictate that they had maintained substantial

1 compliance.

2 THE COURT: Well, you raise -- two questions about
3 that. First is you raised this issue, and so did Mr. Hager,
4 about political influence. Can you represent to me that there
5 has been absolutely no input or influence by any Schedule C
6 appointee into the direction and position that should be taken
7 by the U.S. Department of Justice in this matter?

8 MR. GEISSLER: I would hesitate to try to give away
9 any internal deliberative information with regard --

10 THE COURT: And you're welcome to decline to answer.
11 But if you want to tell me that there's been no Schedule C
12 input, you're welcome to tell me that; or you're welcome to
13 tell me because of the internal deliberations of the
14 department, you decline to answer. I'll accept the latter.
15 I'll accept either.

16 MR. GEISSLER: I will decline to speak to whatever
17 happens above my pay grade. What I can say is with respect to
18 the compliance report that is before Your Honor, we wrote that
19 based upon the facts. That was written at the trial attorney
20 and Assistant U.S. Attorney level and is based upon the facts
21 established in the documents provided by the City, the
22 individual interviews that we conducted, and the work we did
23 with our non-testifying expert consultant.

24 MR. HAGER: I would like to represent that no
25 compliance rating that I have suggested has been turned over or

1 rejected by any Schedule C appointee.

2 THE COURT: The second point that I was going to say
3 is this: Assuming that you're right, and you very well may be,
4 that given the plaintiff's statement that as of 14 days ago,
5 January 10, 2020, the plaintiff believes that there's full
6 compliance with the PCCEP amendment, I would be very interested
7 in finding out if that continues for 12 months from January 10,
8 2020. And so if we hit the anniversary mark of January 10,
9 2021, and you still report to me at some point thereafter that
10 in plaintiff counsel's position there is substantial compliance
11 with all aspects of the settlement agreement, understanding
12 that the PCCEP amendment amends, at least conditionally, the
13 COAB, I would be very interested in hearing that, and I want to
14 hear that.

15 I assume you don't want to be in this case forever. It
16 wasn't the plan in the original settlement agreement. I get
17 that. That's fine with me. I will tell you we will probably
18 be scheduling the hearing in late February or sometime in early
19 March, but if what you want to report to me at that time is
20 that in the opinion of the United States Department of Justice
21 there has been substantial compliance from January 10, 2020,
22 through January 10, 2021, I look forward to hearing that one
23 way or the other -- whatever you choose to report -- but the
24 hearing will be late February, early March.

25 MR. GEISSLER: Understood, Your Honor. That's

1 precisely why we have the one-year substantial compliance, is
2 so that we can have that same assurance that the systems are
3 working during the sustained compliance period, that -- that --
4 I'll leave it at that, Your Honor.

5 THE COURT: Okay.

6 Any other comments or -- I didn't mean to cut you off, but
7 I wanted to follow up with those questions from what you said.
8 Was there anything else you wanted to say, Mr. Geissler?

9 MR. GEISSLER: No. I believe you covered the next
10 steps, Your Honor. But if you have any further questions on
11 the process or procedure going forward, I'm interested to make
12 sure that we address those today. We have very few dates
13 during which we actually see one another in this courtroom and
14 are able to discuss this case. I do not want this Court to
15 walk away with a sense that we're trying to obfuscate or hide
16 anything here. We're trying to understand the process going
17 forward as Your Honor would like it.

18 There is a process that the parties have agreed to in the
19 settlement agreement and we believe the standard is not
20 performance of the PCCEP amendments for approval. It is
21 fairness, adequacy, and reasonableness, and would hate to
22 establish, as any sort of acceptable precedent, that we have to
23 demonstrate compliance in order to receive acceptance. That
24 would be harmful on a programmatic level to our other cases.

25 THE COURT: Understood. We'll speak again after I

1 hear from the City, from the Portland Police Association, from
2 The AMA Coalition, and from the Mental Health Alliance.

3 MR. GEISSLER: Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Geissler.

5 Mr. Karia or Ms. Reeve or Mr. Vannier, who wishes to speak
6 next?

7 MS. REEVE: Your Honor, Tracy Reeve for the City.
8 Before we move to the speeches -- speechifying of the lawyers,
9 I would like to allow -- the two PCCEP staff wanted to briefly
10 address the Court.

11 THE COURT: Absolutely.

12 MS. REEVE: So Judith Mowry, who's with the Office of
13 Equity and Human Rights and who has been supporting the PCCEP
14 work from the Office of Equity and Human Rights and who served
15 as the interim PCCEP program manager for a period of time, and
16 Theo Latta, who's now the PCCEP program manager, are here to
17 speak.

18 THE COURT: Wonderful. And welcome.

19 MS. MOWRY: Thank you so much and thank you for this
20 opportunity.

21 THE COURT: Would you like to sit down? Would you
22 like a chair? There's a chair right behind you. You can bring
23 up one of those if you're more comfortable. It's totally up to
24 you. I don't mean to put pressure on you one way or the other.

25 MS. MOWRY: I do appreciate it. Are you going to be

1 able to hear me?

2 THE COURT: Yes. Move over so I can see you.

3 MS. MOWRY: I have a big voice. Okay. Great. Thank
4 you for giving us the opportunity.

5 THE COURT: Mary is going to give you a microphone.

6 MS. MOWRY: So thank you so much for your time today,
7 Judge Simon, and I really appreciate your thoughtful questions
8 and the way in which you're hearing from so many people. I
9 want to thank all the amici and others for coming and
10 expressing their experience. I think there's a lot of valuable
11 lessons to be learned here.

12 I have 30 years of experience facilitating and working
13 with groups. Groups are challenging, as everyone knows who's
14 ever been in one. And also, in this day and age, I think it's
15 even harder for us to come together sometimes. And in this
16 experience, where we're trying to address a lot of different
17 issues with a lot of different lived experience that has also
18 been challenging to build group cohesion, I feel like the PCCEP
19 has worked very hard. I appreciate that the SPMI came and
20 testified as to their experience. I share a concern that it's
21 been very difficult to sort of figure out how to balance the
22 different interests and also how to create the time for the
23 volunteers to be able to learn more about what is it like to
24 live with a mental illness in Portland. How does that affect
25 you? How do we listen to each other and figure out how we can

1 best serve each other in terms of how we engage with the
2 police? So I think that's a challenge.

3 And the -- a couple of other things. It was very
4 important, when the PCCEP plan was developed and with the COCL,
5 that they have independence. And so, like, to the matter --
6 some people have said a need for a facilitator. The -- the
7 PCCEP did not want a facilitator. We offered one repeatedly.

8 I think one of the things that the PCCEP has offered is an
9 opportunity for some of its members to learn more to build
10 their skills. It hasn't all been pretty. It's all been in
11 public. Sometimes there's some problems. But I honestly think
12 that being able to -- that independence, in terms of being able
13 to grow -- and we have some younger members, and I think that
14 it's a really great opportunity for them to learn how to do
15 this work. So that is that issue of independence.

16 I also wanted to say something about it would be so much
17 better if we could all be a team. I come from mediation, so if
18 all of us -- the AMA, the Mental Health Association,
19 everybody -- could sit down together to do some of this
20 problem-solving -- there's been a lot of call for a community
21 organizer. A community organizer is an answer to a question.
22 My question is what are our metrics in terms of how we have
23 engaged the community? What are we organizing toward? My
24 understanding is we want the community and the police to engage
25 better. Right? So what are we talking about when we say we

1 want to organize communities to come to meetings? It's unclear
2 to me.

3 So I think if together, collectively, we could identify
4 some outcomes -- and I've heard that a lot -- and identify what
5 some metrics are for that, we could then talk about how do we
6 reach that outcome.

7 You know, we -- we are trying staying in the same
8 neighborhood for three months at a time, doing four different
9 parts of town, because one of our thoughts is that perhaps the
10 fact that we move every month keeps people from being able to
11 get really engaged and stay engaged with the process. So we
12 are at NARA for a few months. We're hoping to really engage
13 communities that, you know, either use NARA services or are in
14 that area, and then hopefully that will -- you know, people get
15 engaged enough that they will then want to follow along and be
16 part of us when we're moving every month.

17 So it's not like this is thoughtless on our part about
18 what we're trying to do.

19 The other thing -- so, again, I think if we could all work
20 together to solve some of these problems, some of the things,
21 like notices being posted, you know, some of the -- some of the
22 subcommittees, they're just, you know, not that great about
23 getting back to us about what their agenda is two weeks before.
24 It's not like we don't try.

25 So I think sometimes it's a matter of, again, respecting

1 the volunteers, working with them in appropriate ways. And so
2 I guess those are the biggest things that I really wanted to
3 make sure that were understood. And, again, the idea that we
4 could work together toward these outcomes, I think, would be
5 fantastic. I would love to have us all sit down in a room and
6 say, "What does success look like?" And because it seems to me
7 this is the only avenue that people have around the settlement
8 agreement, about all that stuff, so everybody comes into the
9 same space.

10 THE COURT: Let me ask you, because what you're
11 saying makes an awful lot of sense -- it's very, very wise --
12 why hasn't that happened in the past six months?

13 MS. MOWRY: I am not -- I -- I have to say I -- I
14 don't know. I don't -- I feel -- I know staff has reached out,
15 often unsuccessfully, to some of the amici, in terms of wanting
16 to have those kind of relationships. There's not a lot of
17 attendance at the Steering Committee meeting, which would be a
18 great place to talk about some of this.

19 Again, I just don't think we have been very -- I don't
20 think we have been very clear about what the outcomes we want
21 are.

22 I know that I believe we can get them if we know what they
23 are.

24 THE COURT: Why -- why haven't we seen that clarity?

25 MS. MOWRY: Well, I think that's a good question. I

1 don't think the clarity is written into the PCCEP plan
2 necessarily, so I think that makes it challenging. I think a
3 lot of people read a lot of different things into that plan
4 and, using the volunteers, you know, people come in and they
5 have their own ideas of what should happen with stuff and
6 things like meeting with all the people that are listed in that
7 plan to meet -- some of which really aren't going to be that
8 helpful or that good a use of time. I think we have to be
9 careful not to just check boxes, but to see are we growing?
10 Are we able to better meet the expectations? That really is
11 our desire.

12 And I'll just say one other thing about a community
13 organizer is -- being a city employee is -- the experience is
14 so sometimes startling to me about how othered we are just
15 simply because of where we work.

16 You know, I have been out in the community and for the
17 same issues for decades, and I have my integrity question
18 regularly on whether or not I'm willing to tell the truth or
19 whether I'm willing to push back against authority because I
20 work at the City. I think that, unfortunately, hiring a
21 community organizer is -- you know, "I'm from the City." End
22 of conversation. So we really want to think creatively about
23 that. Right?

24 So I do just -- I think that's a good question. I hope we
25 are all going to go back and think about these things. We have

1 had great feedback today. I'm really anxious to go back and
2 say this is clearly something that people -- we feel strongly
3 about, that we can do something about. Perhaps the thing we
4 need to do is go back and invite everybody to come into the
5 same room, as long as it's okay under the legal -- no offense
6 to the lawyers, but if we can just get in there and say, "What
7 is it we need to accomplish, and how can we do that together?"

8 THE COURT: I appreciate your advice, your insights,
9 your wisdom on this point. I frankly agree with most of, if
10 not everything of what you just said. I also observed that
11 what you have just said goes right to the heart of the question
12 of whether or not the stipulated amendment is facially
13 adequate, and I see -- I'm glad you agree.

14 MS. MOWRY: Uh-huh.

15 THE COURT: Thank you.

16 MS. MOWRY: Thank you so much.

17 THE COURT: State your full name for the record.

18 MR. LATTA: My name is Theodore Latta. Last name is
19 L-a-t-t-a. I just took some notes. Well, I have a soft voice,
20 so I'll try to get close to the mic. I'm PCCEP staff. My
21 title is PCCEP Project Director. I understand why folks are
22 compelled to ask for a community organizer. One of the big
23 knocks as a researcher of research is scientists will go into
24 communities and extrapolate data for publications or to get
25 attention and bring awareness, oftentimes well-intentioned

1 individuals, but they leave the community with nothing or no
2 benefits, and PCCEP is not that way. The recommendations are
3 guided by community input, but I understand.

4 To speak to Judith's point a little bit, I understand why
5 folks are compelled to ask for a community organizer. I just
6 think that when one considers the diversity of stakeholders, it
7 seems the subcommittees with financial and programmatic
8 assistance from PCCEP staff and the City are better equipped to
9 engage such diversity. We have native folks, black folks,
10 folks on the spectrum, folks who are houseless, folks with
11 mental illness, Latinesque folks, LGBTQ-plus folks, and many
12 other communities, and they may not be engaged by another city
13 employee, as Judith had alluded to. So I think subcommittees
14 with financial assistance and with guidance from the City would
15 be better equipped to engage in these communities.

16 And one of the most important things, I think, is PCCEP is
17 still young and it does take time to engage diverse
18 constituencies, especially when there's such a level of
19 distrust in the community. And as a researcher, this is what
20 we know. That's why community-based participatory acts and
21 research was founded to engage communities who didn't want to
22 be engaged by scientists, let alone authority figures, like the
23 police and folks like that.

24 There was a reference to statistical know-how. PCCEP has
25 statistical know-how. I assure you we have every confidence

1 that we can collect data in a comparable way that COCL does.

2 And to speak to Mr. Handelman's point a little bit, when
3 COCL gets out of town, then I think that PCCEP is well-poised,
4 if granted the same level of access and collaboration, to step
5 into a research role and to work in that kind of venue. That
6 would also help to mitigate concerns of outside sourcing and
7 increase trust by acting as a vessel of information sharing
8 that is contextual.

9 Contextual information is one of the most important pieces
10 of this because people care so much and because the community
11 is -- plays such a prominent role in guiding the
12 recommendations. Because the PCCEP members are here because
13 they care, as Your Honor must have heard by community testimony
14 among the PCCEP members.

15 Anyway, that's all I've got.

16 THE COURT: Mr. Latta, thank you very much for your
17 comments.

18 Let me ask you, sir, your perspective, as a researcher and
19 quantitative analysis -- analyst on this, do you have any
20 understanding or opinions as to the basis of the attrition that
21 we have seen on PCCEP over the past six months or more?

22 MR. LATTA: Yeah. So we were just thinking about
23 that, and to my knowledge, only one individual has expressed
24 that they were leaving -- one full committee member has
25 expressed that they were leaving because they felt hampered and

1 they felt disrespected. The majority of people leave because
2 of college, leave because of relocation or mental health.
3 Because being in front of the public is often hard, especially
4 when folks come just to heckle other folks who are PCCEP
5 members, and that happens at some meetings.

6 I also wanted to -- sorry. That was loud. I also wanted
7 to mention, in terms of people showing up at meetings, I know
8 that was -- it's not necessarily a barometer of community
9 engagement, but hundreds and hundreds of people are watching it
10 on YouTube. We have hundreds of views on YouTube for the
11 live-streamed version of this. But back to your point about
12 attrition, I think that people give their time and passion to
13 things that are important to them while they can. And because
14 these are volunteers, they can't always do it, and I think
15 that --

16 THE COURT: I'm sorry. I understand your point about
17 attrition. But then having the lack of continuity can't
18 possibly be a good thing, and so is there anything that you can
19 see that can be done that could diminish or decrease the level
20 of attrition we've been seeing?

21 MR. LATTA: As I said earlier, PCCEP is still
22 relatively young, so we're still working out the kinks of being
23 support; but PCCEP staff has spent hours and hours and hours on
24 the phone trying to help people through frustrations with other
25 committee members as a team. Right? So teams have issues.

1 But I -- I don't think that PCCEP has been hampered by
2 that. I think that the work -- I don't think the work has
3 suffered. I think it -- continuity is incredibly important. I
4 really don't think the work has suffered as a result of
5 attrition.

6 THE COURT: Thank you, Mr. Latta. I appreciate your
7 comments.

8 MR. LATTA: Thank you.

9 THE COURT: Back to you, Ms. Reeve. I think you
10 wanted to do some speechifying.

11 MS. REEVE: Speechifying, Your Honor.

12 So I'll be brief, Your Honor. First of all, the City of
13 Portland would join in the comments and positions taken by the
14 United States Department of Justice.

15 Second, I wanted to address a question that was asked by
16 Mr. Walsh at the very outset of our time together today, and he
17 said, "Well, we're in compliance. In compliance with what?"
18 And I think that's a really important question to keep in mind.
19 And the "what" is a settlement agreement between the United
20 States, the City, and the PPA, with amici participating.

21 That settlement agreement, as amended, sets forth 187
22 paragraphs and very specific standards for compliance. And
23 that is what substantial compliance is measured against: Those
24 obligations that the City agreed to undertake to try to address
25 specific circumstances that the Department of Justice found in

1 its investigation after the -- that was called for, and we are
2 grateful, by a community who, as has been expressed here today,
3 have been involved for decades in trying to improve policing in
4 Portland. That was also called for by the City's own elected
5 officials and the Department of Justice, under the Obama White
6 House, noted the City's cooperation with that investigation
7 from the outset. That settlement agreement was negotiated and
8 agreed to before this lawsuit was even filed.

9 So that is the answer, I believe, to what -- compliance
10 with what.

11 I think part of what we're hearing today, as I sat and
12 tried to take a few notes, and even as I reviewed the briefings
13 submitted by the amici, most of the issues that people are
14 raising and most of the concerns that are being expressed and
15 most of the arguments that are being made are not that the City
16 is not in substantial compliance with the specific 187
17 paragraphs of the settlement agreement. It is that there
18 continues to be a trust deficit. There continues to be
19 concerns, and that tells us that there continues to be work to
20 be done. But that does not mean that the settlement agreement,
21 the contractual arrangement between the City of Portland, the
22 United States Department of Justice, and the Portland Police
23 Association is the solution to all of those problems, and we
24 would submit that it is not. And we continue to have a lot of
25 work to do, and we know that.

1 Chief Resch, I've heard, since she became chief, has been
 2 speaking to that and to the importance of building trust
 3 bridges so that that can be developed, and individual officers
 4 don't have to redo that every single time because they have
 5 that trust with the community.

6 Today, in speaking with Mayor Wheeler, when the subject
 7 was raised about more collaboration, about more discussion, he
 8 suggested that we have a quarterly meeting, hosted by the
 9 Mayor's office, with the police bureau. Chief Resch has
 10 indicated she would be happy -- or she or her command staff
 11 would participate in that; that the amici, we would hope, would
 12 be willing to participate. We could have PCCEP co-chairs staff
 13 participate, as appropriate, so that we can begin to address,
 14 in a collaborative way, on a quarterly basis, how we can
 15 address some of these other issues that frankly aren't directly
 16 within the purview of the settlement agreement.

17 So we hear the community. We understand that there
 18 continue to be concerns, but I think it's -- what we have here
 19 is a little bit of a -- when people have a hammer, everything
 20 looks like a nail. And because this is the tool that people
 21 feel that they have to address whatever concerns they have
 22 about the police bureau, they're bringing them to Your Honor
 23 whether or not they're actually within the four corners of that
 24 settlement agreement.

25 And moving on to that, the City would, with the Department

1 of Justice, renew the stipulated motion for entry of the final
2 amendments to the settlement agreement.

3 Your Honor asked -- I'll slow down. Your Honor asked the
4 question of whether there is any credence to the suggestion
5 that the lack of final approval has an impact on PCCEP
6 participation, and I certainly don't claim to have any actual
7 evidence for that, but I can tell you I have attended almost
8 every meeting of the PCCEP. I believe I may have missed one.
9 But it comes up regularly.

10 And last night when the PCCEP was discussing their
11 submission to Your Honor, and they took some time to go back
12 and forth -- there was a robust discussion. There were
13 differences of opinion. But one thing that came up was a
14 concern of, you know, we need to let the judge know that we are
15 in substantial compliance under the settlement agreement so
16 that we can continue to exist and do this work. And so I think
17 they're very acutely aware that they -- that there is not final
18 approval for the structure.

19 Speaking on behalf of the City, as the City's attorney,
20 it's extremely challenging to continue to work to build
21 substantial compliance, to maintain substantial compliance, to
22 build these relationships under a structure which has not been
23 finally approved. This is the fourth time that the Court has
24 considered these amendments, and I'll be honest, it feels like
25 a bit like a moving target because at the initial hearing, the

1 discussion was, "Yes, PCCEP members have been appointed. The
2 training is occurring, but they haven't had a meeting yet.
3 Let's give it six months."

4 We came back, and PCCEP had been meeting for six months.
5 We submitted quite a bit of information about the work they
6 were doing.

7 We're now six months further down the road. Last night
8 PCCEP held its, I believe, 16th regularly scheduled monthly
9 meeting. They have been submitting very substantive
10 suggestions and proposals to the City. There has been robust
11 discussion. There is not always agreement. We heard some of
12 that with regard to the Subcommittee for People with Mental
13 Illness. And I think we're going to expect that.

14 So I think having a robust community engagement body is
15 not always going to be smooth sailing, but the City believes it
16 would be extremely beneficial to have that structure approved
17 as fair, adequate, and reasonable, even as we continue to work
18 to improve and maintain substantial compliance with the
19 structure.

20 It's -- it's a bit circular to try to substantially comply
21 with something to demonstrate that it's fair, adequate, and
22 reasonable, and feels sometimes a little bit like an endless
23 loop.

24 So the City would renew its request that the -- that the
25 Court grant final approval of the settlement agreement

1 amendments and then we well understand that substantial
2 compliance needs to be -- continue to be demonstrated for a
3 further year.

4 So I think those are the major points that I wanted to
5 make, Your Honor. And I just want to represent on behalf of
6 the City and its elected officials, the chief of police, that
7 the City is committed to continuing the work of improving the
8 Portland Police Bureau of addressing some of these large
9 structural issues. We're aware that we, in Portland, like
10 many, many, many, if not most, if not all cities in the United
11 States, have issues around racial disparities in our criminal
12 justice system. We are aware that we have a lot of work to do
13 to continue to rebuild trust. We were aware that we haven't
14 solved the problem of how to avoid uses of deadly force against
15 people who are either in -- suffering a mental health crisis or
16 suffering from mental illness or suffering from drug addiction
17 that creates those symptoms. So all of that work, you know,
18 remains to be done.

19 But to say that there haven't been substantive
20 improvements or that the City hasn't complied with the 187
21 paragraphs that it agreed to comply with, we think that the
22 evidence is to the contrary to that.

23 We appreciate the work that the United States Department
24 of Justice and the compliance officer have done in monitoring
25 that performance. I can tell you that when you're on this side

1 of the table and responding to the information requests and
2 going back and forth and working on the policy revisions and
3 all of the work that we have done with our partners over the
4 many, many years, it certainly feels like vigorous oversight.

5 So I'll end on that note and just say that we would look
6 forward to -- as I say, the mayor would -- would look forward
7 to hosting some quarterly meetings where we can talk about some
8 of these issues that -- and it doesn't have to be purely in the
9 context of the settlement agreement because many of those
10 issues are outside the scope of the settlement agreement.

11 Thank you.

12 THE COURT: Any insight on why those haven't been
13 done previously? I mean, it sounds like a great idea.

14 MS. REEVE: I will say that one thing that has
15 occurred to me, as I have worked with the City on these issues,
16 is, I think, to some extent, the settlement agreement and all
17 of this work has been extremely beneficial, and now those
18 systems are in place. They need to be maintained. We need to
19 keep looking at them. We need to keep working on them. I
20 don't mean that, you know, once we do achieve that substantial
21 compliance and enter the maintenance period, that won't occur,
22 because I do think that those systems are in place and will be
23 maintained.

24 It sucks a lot of the oxygen in the room to have as much
25 focus as there is on specific legal compliance with the

1 settlement agreement terms, and I know that one thing that we
2 have talked about frequently at the City, at the police bureau,
3 is that as we move beyond substantial compliance or into
4 maintenance of substantial compliance, that there is, perhaps,
5 a little more room to tackle some of these other issues.

6 THE COURT: The term I would use is sustained
7 substantial compliance. I think that's what Mr. Geissler
8 referred to as well. I would expect, though, that we would
9 have sustained substantial compliance during the period that
10 we're looking to see whether we have sustained substantial
11 compliance. So I encourage you to keep up with those good
12 ideas.

13 I do think it's a very good idea -- the quarterly meetings
14 that you and the mayor are proposing. It's still not really
15 clear on why they haven't been done, but I can't -- we can't
16 change history. We can only change the future, so I encourage
17 you to do it.

18 MS. REEVE: And I will say, Your Honor, that at
19 different times there have been significant periods of time
20 where we were meeting very regularly with certainly the
21 Albina Ministerial -- Albina Ministerial Alliance Coalition for
22 Justice and Police Reform, and so that has not been happening
23 as regularly recently, but there were certainly periods of time
24 during this process where we were meeting regularly at the
25 level with our elected officials, Dr. Haynes, Dr. Bethel,

1 counsel, other esteemed members.

2 So thank you.

3 THE COURT: Ms. Reeve, would you like to call on the
4 compliance officer to make any presentation now or should we go
5 to Mr. Karia? What do you recommend?

6 MS. REEVE: The compliance officer would like to
7 present, and so if now is a good time?

8 THE COURT: It's up to you and Mr. Karia. Mr. Karia,
9 you're a party. Do you want to make any statements now, or do
10 you want to make any statements after the compliance officer?
11 Your preference.

12 MR. KARIA: I will save my incredibly brief comment
13 until after the compliance officer.

14 THE COURT: Very good. Welcome.

15 DR. ROSENBAUM: Thank you, Your Honor. I'm
16 Dennis Rosenbaum, the compliance officer.

17 THE COURT REPORTER: Sir, could you speak up a little
18 bit?

19 THE COURT: The reporter is asking you to speak a bit
20 more loudly into the microphone or --

21 Mary, can we adjust the microphone?

22 DR. ROSENBAUM: I can move up a little bit. Thank
23 you.

24 Before I give my presentation, which shouldn't take that
25 long, I do want to respond to some of the things said today.

1 You know, I -- first, I just want to say -- again, remind
2 people we're not a party to this agreement. We are
3 independent. And over the years our record reflects that we
4 have called out the City and the Portland Police Bureau many
5 times, asked them, and insisted that they change their
6 behavior, and they've been responsive most of the time. Some
7 of it took more persistence than others in the first couple of
8 years, but generally -- and also, you know -- so I just want to
9 say we're all about telling the truth and let the facts be what
10 they may, and, you know, this issue today of exploring and
11 trying to define what substantial compliance is, I -- I would
12 have to -- I think DOJ has made it clear, and the City, that --
13 and I want to confirm that -- that the settlement agreement, to
14 me, is pretty clear that if you do these things that are listed
15 under these 180-some paragraphs and you do them well -- you
16 don't just do them -- we were pretty insistent on that -- that
17 that is the clear indication of compliance, and I think it's
18 summarized nicely in paragraph 170, which talks about the
19 importance of creating these systems of review and
20 accountability and feedback loops and all of that, and we have
21 worked really hard over the last five, six years to help the
22 City create those systems and implement them well and see what
23 the results are.

24 So, you know, internally, for example, the force review
25 process and the force audits and the EIS, employee information

1 systems, to keep an eye on individual employees and their
2 behavior and the training, the needs assessment, to go in and
3 make sure that the training is really responsive to what the
4 city needs, the community needs, the police need, and the
5 evaluations of training, we work really hard to get the
6 Portland Police Bureau to implement a very comprehensive set of
7 training evaluations, more so than I have seen now in any other
8 city in the country.

9 There's all -- I give the Department credit for creating
10 this internal inspector general that does lots of different
11 audits. Police departments need to be audited internally and
12 externally.

13 Externally, PCCEP, one of those, you know, big, important
14 systems that I want to talk about just today, and Independent
15 Police Review in Portland and the Citizen Review Committee and
16 the Training Advisory Council, you've heard from a lot of them.
17 I think they all serve an important role.

18 This idea of evidence, I just want to -- I don't know what
19 the Federal Rules of Evidence are. You alluded to that. I'm
20 not an attorney; but, you know, as a social scientist, we use a
21 very scientific approach to evidence, and I -- you know, I
22 spent over 30 years teaching Ph.D. students how -- how do we
23 generate knowledge and what kind of methods would we use to
24 distinguish the truth from fiction? And I do have to say I
25 discourage them from being distracted by small numbers because

1 they don't -- and -- but, again, I mean, the tragedy associated
2 with a police shooting, the family's tragedy, the trauma, I in
3 no way want to underestimate that, but I also want us to back
4 away and see if we're making any headway on the bigger issue.
5 And, you know, there's -- there's, like -- you know, I was
6 looking at data where there's 11,000-plus calls for service
7 involving the Portland Police Bureau with a mental health
8 component to those calls, and force was used in less than one
9 half of one percent.

10 So we have to also -- that's the bigger picture. Within
11 that, there's -- the most common use of force is the less
12 serious force; but there are these tragedies, and they need to
13 be studied, and they need to be investigated, and they need to
14 be -- people need to be held accountable, if necessary, and we
15 don't disagree with any of that. I'm just saying evidence is
16 a -- is a bigger issue for us.

17 And the idea that we don't look at statistics -- I know
18 that Dan Handelman from Portland Copwatch has said that a
19 number of times -- that's just completely absurd. You need to
20 read our reports. We have examined all kind of systems
21 repeatedly, including everything from the time it takes to
22 investigate complaints against the police to ECIT, Enhanced
23 Crisis Intervention Response, to mental health calls. We have
24 reported good news and bad news, that -- you know, on survey
25 findings for example, we report there's significant

1 improvements in public satisfaction with police encounters
2 between 2016 and 2019 with 86 percent of the people satisfied
3 in 2019.

4 But, again, you know, I'll also point out that
5 African-Americans and some other groups were not nearly as
6 satisfied, and that's an issue that still needs to be
7 addressed.

8 Traffic stops? Yes, I did praise them for having certain
9 benchmarks. Much more so than other law enforcement agencies
10 that I looked at. But we also acknowledge the disparities in
11 searches. They are searching African-Americans more.

12 So we want the police to focus their energy on changing
13 these biases, and we stress that in training on procedural
14 justice and implicit bias and emotional intelligence -- I
15 talked to you about that before -- how important -- I spent a
16 lot of my career looking at procedural justice, and I have been
17 pressing very hard in Portland, and I think they have some good
18 training scenarios in place now.

19 So I think the focus should be on Section 9, on community
20 engagement, so I just want to quickly read my testimony here.
21 And based on extensive review of documents and observations and
22 of meetings and involvement with experts that we have also on
23 our team and review of data, we would argue that the amendment
24 is fair, adequate, and reasonable. So let me just quickly turn
25 to my presentation. And I have a copy of this for you,

1 Your Honor.

2 I do want to say that based on our work that on
3 October 2nd of 2019 we reached the conclusion that the City of
4 Portland had achieved substantial compliance with each section
5 of the settlement agreement, including Section 9; and, as you
6 know, DOJ has reached a similar conclusion recently, on
7 January 10th.

8 Again, the City has to maintain compliance for at least a
9 year, and we'll be reporting each quarter, as we have done, on
10 whether these established remedies are, in fact, durable.

11 To me, the sort of fundamental question is whether the
12 Portland Police Bureau and the City have maintained these
13 systems of review and feedback and corrective action. They
14 should not be eliminated, diminished, or circumvented in any
15 way. This includes the systems of community engagement.

16 So, you know, we argue that the Portland Committee on
17 Community-Engaged Policing, or PCCEP, serves a critical role in
18 maintaining and improving upon the reforms that have been
19 implemented over the past six years; and, believe me, there is
20 always room for improvement.

21 The settlement agreement requires PCCEP to do certain
22 things. It requires the City and the police bureau to do
23 certain things under the community engagement section.

24 Paragraph 141 clearly says that PCCEP was created to
25 leverage the ideas, talent, experience, and expertise of the

1 community. We followed PCCEP from its inception, and with few
2 exceptions, really, this group has consistently functioned as
3 an independent legitimate mechanism of engagement, as expected
4 by paragraph 141 and 151. And as many people said today, this
5 type of work is very difficult. So this relatively young group
6 of community members, I think, deserves a lot of credit for
7 weathering a politically stressful job with sometimes very
8 divergent perspectives, and we saw some of that last night at
9 their meeting.

10 They have created the structure and leadership to function
11 effectively, as they have their five subcommittees that meet
12 regularly and provide reports and recommendations to the full
13 PCCEP. They have bylaws and protocols that are needed to
14 select new officers, add new members, streamline
15 recommendations, and take other actions.

16 So, you know, while the membership does change, I think
17 the group also represents a pretty broad spectrum of the
18 community. They meet regularly, as a whole, and with the
19 subcommittees, and this has provided multiple opportunities for
20 input on police-community relations, including the town hall
21 meeting they have held, where we have also presented our
22 findings.

23 They've maintained a solid working relationship with the
24 City and PPB. And if we felt they hadn't, I would quickly
25 report that. I have no interest in not doing that.

1 And with other organizations, including AMAC and the
2 Portland Police Association, they have continued to do work
3 that is required in the PCCEP plan and provided numerous
4 recommendations to the City and PPB, including feedback to the
5 PPB on its community engagement plan, its annual reports, and
6 these are specific paragraphs that they're required to do in
7 the settlement agreement: 142, 146, 150. As well as giving
8 recommendations to the City related to alternates and if
9 someone does resign. Attention to police union negotiations.
10 I don't know. Maybe you want to talk about that. And then
11 giving us meaningful feedback actually on our quarterly report,
12 so we appreciate that.

13 So, in sum, we feel that PCCEP has met and exceeded the
14 expectations created by the settlement agreement. As we have
15 said before, looking at everything, we believe they have the
16 skills and resilience to survive and adapt to its environment.

17 Now, turning, just quickly, to the City's role in PPB,
18 they have continued to maintain their obligations under this
19 section. They have -- the City continues to provide training
20 and administrative support to PCCEP. Paragraph 144. Hiring a
21 project director, working with PCCEP on the process of
22 replacing members who resign, training new members, providing
23 IT and website support, providing ADA access, and offering
24 other services.

25 My understanding was that the training, although I have

1 heard some people complain about the training today, that the
2 people we interviewed were satisfied with the training. So,
3 again, you're really getting mixed stories on some of this
4 stuff.

5 PCCEP and the City have done considerable work to research
6 the underlying issues of police-community relations and police
7 services, through data collection, analysis, and reporting,
8 including providing demographic data at the precinct level.
9 That's paragraph 147. Conducting city-wide survey. Paragraph
10 146. And recently conducting a contact survey with victims who
11 have called the police for help.

12 They drafted a community engagement plan, three different
13 paragraphs, based on data from the city-wide survey on their
14 strategic process, their strategic planning process, and input
15 from PCCEP. And that plan was approved by the City Council in
16 October of 2019.

17 The PPB has engaged the community and PCCEP in a variety
18 of ways. Paragraph 145. They have an office of community
19 engagement, and we have spent time with them, and they have
20 held many meetings with diverse community groups around the
21 City and to develop better relationships and to better
22 understand the problems they face. The woman who runs that
23 office is very impressive.

24 PPB has also maintained a working relationship with PCCEP.
25 They continue to send high-level employees to these meetings

1 and subcommittee meetings, as does the City's legal department.

2 PPB has worked with PCCEP on the city-wide survey, the
3 community engagement plan, their annual report, and has
4 accepted many of the recommendations from PCCEP and continues
5 to work with them in 2020. I know the new chief has the
6 commitment, at least as expressed to us and to others and the
7 partners, to do that.

8 PPB has released its annual report in a more timely
9 manner, as requested by PCCEP. Paragraph 150. Presented the
10 results at precincts and City Council.

11 So, in summary, the PPB continues to comply with the
12 community engagement requirements of the settlement agreement.

13 In closing, Your Honor, I would like to underscore one
14 point. The settlement agreement does not require the City or
15 PPB to prevent or solve every public safety problem it faces.
16 Rather, it requires that the PPB strengthen its capacity as a
17 learning organization and establish durable remedies to
18 emergent problems.

19 Specifically, the City and PPB are required to create
20 these systems that can be used to identify problems or trends
21 and intervene to correct and sometimes prevent them.

22 Such systems are now in place from their mental health
23 response to officer training to accountability to use-of-force
24 reviews, et cetera, as I have discussed earlier.

25 One of these new systems, really, is the community

1 engagement, as reflected in the work of PCCEP.

2 Now, if Portland is to sustain the progress it has made
3 over the past six years, well beyond the departure of DOJ and
4 the COCL, we strongly encourage the City and the Portland
5 community to continue supporting the PCCEP in its current form
6 and function.

7 Thank you, Your Honor.

8 THE COURT: Thank you, Dr. Rosenbaum.

9 Dr. Rosenbaum, you mentioned in your comments something
10 about the ongoing negotiations with the Portland Police
11 Association contract. Are there any particular issues that may
12 bear on the implementation of the settlement agreement that you
13 can share with us?

14 DR. ROSENBAUM: No. I think that's an area where
15 they're getting into -- you know, they're feeling the freedom
16 to talk about the issues facing the union, including, as I
17 list -- I was going to list here civilian oversight system, the
18 arbitration system, officer accountability, use-of-force
19 policies. I mean, they wanted to talk about a lot of stuff. I
20 don't know to what extent they have, actually, with you. I
21 have not observed those interactions, so I'm not in the best
22 position. Maybe they can. But some of that is beyond the
23 scope of the settlement agreement.

24 THE COURT: Let me ask you this because we talked
25 about this a couple of years ago and we talk about it

1 periodically. I know that there's differences of opinions on
2 this. Is there any progress or any development in the area of
3 body cameras?

4 DR. ROSENBAUM: To my knowledge, there -- the City
5 can address this better. I believe there is a pilot program
6 being explored. I don't know that City Council has approved
7 it. My understanding in Portland is there's differences in
8 City Council about this issue.

9 THE COURT: I recall that.

10 DR. ROSENBAUM: Yeah. I will state my opinion again
11 that body cameras are a good thing, that they make both the
12 police and the community members act in a more orderly manner,
13 and they also are outstanding for accountability so you can
14 actually find out what transpired, as opposed to two people
15 disagreeing, and it's also an enormous training tool.

16 In the future, we're going to see a lot of police training
17 around it. I mean, every training academy, including Portland,
18 uses videos from other cities during their training. So
19 there's a lot of potential benefit. And the downside is
20 they're kind of expensive right now because one company kind of
21 has a monopoly on charging for things, but --

22 THE COURT: Everything you just said is entirely
23 consistent with my understanding, but I'm just one person. I
24 appreciate your insights on that, and that's consistent with
25 everything I've always understood too.

1 DR. ROSENBAUM: Great.

2 THE COURT: Thank you.

3 All right. Mr. Karia.

4 MR. KARIA: Thank you, Your Honor. For the record,
5 the Portland Police Association joins in the renewed joint
6 motion to enter the amended settlement agreement. It also
7 joins in the legal positions taken by the City and the United
8 States, in that regard, to the -- just the discussion that just
9 occurred as it relates to collective bargaining negotiations,
10 the parties have just started bargaining. I do want to be
11 mindful of our state law obligations to bargain in the correct
12 forum, which is at the bargaining table.

13 Because we are so early in the process, I couldn't --
14 could not and would be reluctant to report --

15 THE COURT: Fair enough.

16 MR. KARIA: -- in the interest of good faith
17 bargaining, about what is being discussed at the bargaining
18 table, but just know that the parties are gearing up for more
19 substantive discussions.

20 THE COURT: Consistent with those obligations, can
21 you share with me anything at all about a timetable or an
22 anticipated timetable?

23 MR. KARIA: I can tell you that as of February 7th
24 the parties agree, consistent with state law, that the minimum
25 150 days of collective bargaining at the open bargaining

1 table -- and I use the phrase "open bargaining table" to
2 describe the face-to-face interactions of collective
3 bargaining -- has started. The parties stipulated to that.

4 There's no obligation to bargain only 150 days. That's
5 just the minimum amount of time that the parties mutually have
6 to engage in that process. State law thereafter sets forth a
7 mediation process and a dispute resolution process.

8 So when I say we're early on in the process, we are very
9 much so early on in the process.

10 THE COURT: Understood.

11 MR. KARIA: Okay.

12 THE COURT: Thank you, sir. Anything else you wanted
13 to say?

14 MR. KARIA: No.

15 THE COURT: Thank you, sir.

16 All right. Let's go -- you tell me who wants to go next,
17 as between Mr. Chavez, Ms. Albies, or anybody else, but some of
18 the things I'm curious about -- or Dr. Haynes or anyone else --
19 the comments that we have heard I think need to reflect the
20 fact that I need to figure out is the proposed stipulated
21 amendment that brings us PCCEP to replace COAB, is it facially
22 adequate?

23 I thought that the COAB was facially adequate. That's why
24 I approved it years ago. And it turned out that it was not
25 adequate. And we have everybody in agreement, including the

1 City, conceding, and the United States, as the plaintiff,
2 taking a position, that there was not substantial compliance
3 with the settlement agreement because, among other things, and
4 maybe primarily, the COAB problem.

5 So then the parties get together, and they have proposed
6 this stipulated amendment that brings us the PCCEP. I have
7 given it only conditional approval because I -- I don't know if
8 it's facially adequate. And part of my desire to learn whether
9 it's facially adequate depends upon how it's working. That may
10 be a little bit of a chicken-and-egg problem. I get that. But
11 if something is not working, it may not be facially adequate.
12 If something is working, that may confirm that it is facially
13 adequate. So that's why I have deferred.

14 I will look forward to your comments on that point.

15 I'm also sensitive to the point made by the attorneys for
16 the plaintiff, the United States, that this settlement
17 agreement was not anticipated to go on forever. It did have an
18 anticipated five-year lifespan. We have gone beyond that for a
19 number of reasons, but it's not anticipated that it will go on
20 forever, and so I don't know whether I'm doing any good or
21 doing any harm by having our periodic status conferences.
22 Hopefully, they're somewhat helpful, but they can't go on
23 forever.

24 At some point what needs to happen is we need to end this
25 lawsuit. Hopefully, what has been built positively will

1 continue. The progress that has been developed, in terms of
2 constant and continual improvements, will continue even without
3 Court supervision. I suppose there certainly is always the
4 possibility that if people fall back or there's other problems,
5 other type of systemic type of litigation may arise in the
6 future, whether it be a new lawsuit by the Department of
7 Justice under 42 U.S.C. § 14141, whether there is some type of
8 other systemic litigation, brought by somebody else, with
9 standing. There's always those possibilities in the future.
10 But this lawsuit, with its periodic status conferences, can't
11 go on forever.

12 I also hear the comment from the United States that, in
13 their opinion, as the plaintiff, they believe substantial
14 compliance has been achieved as of January 10th of this year.
15 About two -- January 10th or February 10th? January 10th;
16 right?

17 MR. GEISSLER: January 10th, Your Honor.

18 THE COURT: Yeah. January 10th. And that would
19 start the 12-month clock for whether or not there's sustained
20 substantial compliance. Footnote, putting aside the problem of
21 what to do about the PCCEP amendments, because, as the
22 settlement agreement currently stands, there is not substantial
23 compliance because of the COAB, but that's a very tricky legal
24 issue that we'll only get to if we have to get to.

25 But I think they have triggered the -- what they believe

1 is the 12-month clock, and we'll see where things progress and
2 how things have progressed when we get back together. Because
3 of my scheduling, it will be at the end of February or early
4 March of next year.

5 And then we have also heard some of the comments that the
6 amici, the AMA Coalition and the Mental Health Alliance, should
7 be actively interacting with the City, with the PCCEP, to some
8 extent the plaintiffs, and not waiting until our periodic court
9 conferences to share concerns. I'm interested in your
10 responses to that.

11 So those are some of the things that I'm interested in
12 hearing responses to; but, that said, you are welcome to talk
13 about anything and everything that you wish.

14 Dr. Haynes.

15 DR. HAYNES: Yes, Honorable Judge Michael Simon. I
16 can give you AMAC's perspective on some of those things.

17 First of all, I wanted to start off with the premise that
18 we are not a PCCEP adversary. We helped create PCCEP. We
19 helped create the COAB. We helped create the settlement
20 agreement. We helped create our PR. We helped create the CRC.
21 We helped create the 48 rule. And you can go down the list for
22 the last 20 years that AMAC has been engaged. Before there was
23 a COAB, before there was a settlement, AMAC was providing the
24 City with the reflections from the diverse community about the
25 concern and issues of police, and AMAC has many times been one

1 to stop the city from rioting and burning up. It's because of
2 the interaction that takes place with AMAC with the city.

3 Now, what we are concerned about is, like we were with
4 COAB, as well as with PCCEP, is that we want to get this right
5 as much as possible, and there are opportunities that open up
6 that we can take leaps with police-community relations and
7 build a trust foundation in the community, which is truly
8 enlightening right now, particularly in communities of color,
9 and so we are dealing with -- to us, it's not just a band-aid
10 that you put on something. It's life and death. People are
11 dying. Mentally ill, communities of color, people are dying
12 every day, and so it's a life-and-death situation.

13 You know, we have to go back to the premise that this is
14 an experiment. It started off with DOJ as an experiment. Just
15 like there's an experiment on democracy. It's an experiment
16 where we have to mold and shape and amend and whatever is
17 needed to get a -- the best product and the best structure that
18 we needed.

19 And so we want to affirm the structure itself but at the
20 same time make sure, as we drive and move towards the filing in
21 of this lawsuit that came into being of a settlement agreement,
22 that we have the best that we can for our city that we love and
23 that we, who are going to be the constituents of this city,
24 have to live here and want to bring the best in the
25 relationship between the police and our community.

1 And so that -- that is our basic foundation. I know some
2 consider us to be adversaries, but -- just like some consider
3 Martin Luther King to be an adversary. I don't mind taking
4 that mantle if it meant to make a better America. We want to
5 make a better Portland.

6 I think that we are making progress and AMAC believes we
7 are making progress with that, but every now and then we see
8 things that need fine-tuning in that process to -- to make sure
9 that when we formalize everything that it is adequate and that
10 it is fair and that it would be a structure. Because it is an
11 experiment, we don't know that, no. But we're willing to walk
12 in faith as well as in terms of what our reason to say -- to
13 say that this is the best that we can get.

14 Now, our concern with community engagement, as -- as I
15 said previously, as one who has 40 years of experience, that's
16 been dealing with police-community relationships, was marching
17 with Dr. King and fought for civil rights, I clearly understand
18 that things don't come overnight. It is a process, but it is a
19 development process and -- but we try to do and achieve the
20 best we can.

21 And I think you have an -- a great structure and a
22 framework with PCCEP. You have some of the -- some great
23 people on the PCCEP board, you know, but there are areas that
24 we have highlighted that are concerning.

25 As we go into the future in our beloved city, that we will

1 have a structure that we can amend, adjust, and then to help us
2 foster that, that trust in community relationship with the
3 Portland Police Bureau and to make a better city that is
4 peaceful for the whole community and the diversity of our
5 community. So I wanted to get that out first as apparent.

6 The other thing, in terms of the long-term effect, we
7 never went into this thinking that the DOJ would be here
8 forever, but we went into it thinking in terms as one of the
9 major initiatives for bringing the Department of Justice into
10 this, whereas that we can create a -- a structure, an
11 infrastructure, that will enhance the development of our
12 community-police relationship that will bring justice to the
13 people who have not -- who don't believe that they've received
14 any justice with use of police violence. And so all of this
15 coming together, we know that there's a term. We know that
16 it's going to fall back on the City, and the City Commissioner.
17 And, you know, of course, you have a great transition and
18 there's going to be an even greater transition in City Council
19 that is coming up in this development and this position on many
20 of these issues, and so we -- we want to forge that kind of
21 relationship with the City and with the Portland Police Bureau
22 and all of the entities that are working together to produce a
23 greater city.

24 But at times that means a democracy, and we are a
25 democratic republic, even though some think we're not. In

1 democracy, there is push and take. There's compromise.
2 There's amendments that takes place in a democratic process.

3 The other part of that is that there's an intent. The
4 settlement agreement has an intent and a spirit, just like the
5 preamble to our Constitution has a declaration clause of
6 independence. It has intention and it has -- in terms of
7 purpose, and the intent and the purpose of the settlement
8 agreement was basically, Judge, to -- to what? -- to be
9 reasonable, adequate, and fair in creating a structure that
10 will help forge us closer and closer to what Dr. King called
11 the beloved community.

12 So we have -- you know, some say it's just numbers. It's
13 stats and meeting processes. But it's more than a process.
14 Human beings are not material products. We're human beings,
15 you know. We have a spirit, a soul, and a body, you know, and
16 so you're dealing with people. You're dealing with people who
17 want to have justice and fairness. And just like any other
18 people, whether they live in big homes in the southwest or
19 whether they live in the north or northeast or southeast, they
20 want to have the same rights of justice and be respected by the
21 police that we pay, that work for the City and the public.
22 They want to have that same respect and adequateness that takes
23 place.

24 And so that's why we're here at the table. And amicus,
25 AMAC, has been here even before DOJ was here, you know, and

1 before many of the people -- that the lawyers were here, you
2 know. We were here at this table forging that type of
3 community, in a sense, for the city of Portland.

4 Now, there were -- I'm trying to -- you had quite a few
5 questions there, but I do think that we are moving in the right
6 direction, and we -- certainly, we would have wanted more to
7 happen out of this settlement agreement, and I think you made
8 it clear there's a difference between a decree and a settlement
9 agreement, you know, and my -- honorable counsel is here. We
10 know that it's very clear, in the political sense, that under
11 U.S. Attorney Sessions and U.S. Attorney Barr that there's an
12 attempt to eliminate all decrees in the federal courts, and
13 so -- but I understand there are good professional people that
14 are professional and believe in their job, and I give respect
15 to them on that particular point.

16 But I want to say, finally, I don't know if I answered all
17 your questions, but I think with a certain amount of tweaking
18 colloquially, that we can have PCCEP move forward and be ready
19 to release DOJ to go do some other things and -- and at this
20 time -- and I think that that can take place.

21 We have done it before. We were in rooms for weeks and
22 days and months in putting together this settlement agreement,
23 and I -- I think it can -- it can happen, and there's a
24 willingness of AMAC. But we want to always put the people, the
25 citizens of Portland, first; that they be responded with a

1 structure that is adequate, fair, and -- and just at the same
2 time.

3 I just want to make a statement in terms of the difference
4 between a community organizer and research. A community
5 organizer, many people have an old concept of that, back in the
6 '60s type of thing, but Washington, D.C. government and city
7 government has community organizers working for the City.
8 Dallas, Texas, has community organizers working for the City.
9 Atlanta, Georgia, has community organizers. There are morals
10 throughout the country of how community organizers -- not just
11 in terms of to bring people to the meeting, but also it can do
12 a variety of identifying leadership in the community,
13 disseminate information in the community.

14 You can't do everything by Facebook or necessarily by
15 Twitter, but people have to be touched and people have to
16 receive the information. They have to be engaged to, in turn,
17 become a part of the process.

18 Thank you very much, sir.

19 THE COURT: Thank you. I agree there's an awful lot
20 that can be accomplished when people of good faith sit in the
21 same room face to face with each other that just can't be
22 accomplished, at least as effectively, if at all, by pure
23 electronic meetings.

24 I get that.

25 Thank you very much, Dr. Haynes.

1 Ms. Albies, anything further? And I'll go to Mr. Chavez
 2 or vice versa.

3 MS. ALBIES: Thank you, Your Honor. I just want to
 4 respond to one point about the comments and feedback that the
 5 AMAC has included in their brief to the Court or their status
 6 update to the Court. I don't believe there's anything in there
 7 that has not already been shared with the City. It's possible
 8 that we haven't shared it with the DOJ, but we have sent
 9 letters to the City about some of these concerns. You know,
 10 even just thinking about over the years we've met with the
 11 mayor. We have met with various police chiefs on an ongoing
 12 basis. That hasn't -- Ms. Reeve is correct. That hasn't
 13 happened in the past couple of years or at least a year or so.
 14 I don't know why.

15 The AMAC is certainly willing to do that. But issues of
 16 bias in police stops, that's been something that AMAC has
 17 raised for years. There's the Blue Panel -- Blue Ribbon Panel,
 18 under Chief Sizer, which was many decades ago. So these issues
 19 are ongoing.

20 While the Albina Ministerial Alliance and many community
 21 members are committed to having these discussions, it's also
 22 very difficult, as volunteers, to continue to raise points and
 23 feel like it is ignored.

24 So I think that is something we've heard from folks
 25 feeling that they have not -- issues have not been addressed,

1 and I know that my clients have continued and I also am
 2 continuing to be committed to working on these issues, but that
 3 plays a part in how -- the City asks a lot of volunteers that
 4 engage with -- on these really weighty issues, and I think
 5 that's part of the discussion that we need to be having.

6 THE COURT: One of the things I'm encouraged about
 7 hearing from Ms. Reeve, the offer from her and the mayor to
 8 have quarterly meetings, and I think that will be very helpful.

9 MS. ALBIES: I agree.

10 THE COURT: Mr. Chavez?

11 MR. CHAVEZ: Thank you, Your Honor. And just a pick
 12 from the variety of things that have been spoken since we
 13 returned from lunch, much as we do enjoy coming to see you,
 14 Your Honor, frankly, if we had to wait every eight or six
 15 months to come see you to address these concerns, we -- MHA
 16 would be functionally useless. I mean, we are engaging --
 17 PCCEP -- we are engaging the City on multiple occasions. More
 18 than just in these hearings. So I wanted to start just there,
 19 at a -- of a 10,000-foot view.

20 Closer in, there was some comments from the PCCEP support
 21 staff that I thought are worth highlighting because they go to
 22 whether or not the settlement -- proposed settlement agreement
 23 terms are fair, adequate, and reasonable.

24 I think I heard a comment from the head of the project. I
 25 apologize for blanking on the name, but there was the mention

1 that they have spent hundreds of hours trying to work through
2 issues. I don't think that's entirely, you know, dispositive
3 on the issue of whether or not it's facially adequate, but I
4 think it does speak to some issues being present in PCCEP and
5 the structure that is involved there.

6 There's a comment that some folks might have left PCCEP,
7 speaking to the attrition rate, because it is -- if you have a
8 perceived mental illness or you do suffer or have personal
9 experience in mental illness, it's hard being in public. That
10 goes directly to one of the recommendations that we provided in
11 our briefing, that if we indeed -- indeed, the City is mandated
12 to have folks in the -- per the settlement agreement, to
13 leverage the towns and to have a membership that will come from
14 a reasonable proportion of the community. I believe that's
15 paragraph 143 of the proposed settlement agreement. We need to
16 have at least two folks on PCCEP who have lived experience with
17 mental illness, and those people need to be supported, and
18 those people need to have structure in place that will support
19 them. And that is not apparent from the proposed settlement
20 agreement, either on its face or in its practice.

21 I think it's somewhat telling that the DOJ wants to
22 criticize the evidentiary basis -- Your Honor has already
23 stated that he's not taking evidence in this hearing. But
24 without the community testifying in this circumstance, you
25 know, what the DOJ is then telling you is that only their

1 authority is meant to be trusted or assumed by the Court as
2 what -- as is the basis for you to make a decision today
3 regarding the conditional acceptance of the proposed
4 amendments.

5 We're happy to have an evidentiary hearing and, indeed, I
6 think we suggested just as much for the terms regarding
7 community mental health. Perhaps that would be of value;
8 although, DOJ obviously has mentioned that they believe that
9 any kind of additional resources spent on this case would
10 likely not be warranted or needed by the plaintiff.

11 So just looking at the totality of the settlement
12 agreement itself, parts of which, yes, have been approved by
13 the Court and has been deemed fair, reasonable, and adequate --
14 but I think in its totality, it all speaks to whether the PCCEP
15 amendment itself is fair, reasonable, and adequate. I think
16 just at the very outset of the settlement agreement there's
17 metrics that talk about trust from the community and -- I just
18 had it in front of me. Well, trust in the community. And I
19 think we have heard a significant amount of testimony today
20 regarding that crucial, crucial aspect of this.

21 And, right, and the last -- the last metric is that the
22 improvements should be sustainable. I think that's important
23 because, as we have heard much about -- we've heard the phrase
24 a durable remedy -- much about that today -- this is a durable
25 problem. And I'm not convinced and I don't think that many of

1 the folks who testified today are convinced that PCCEP is a
 2 durable remedy. And I suppose "remedy" even presumes that
 3 there's something substantive there and not merely the process
 4 or the structure that is being presented as the sole criterion
 5 that is being judged on today.

6 I agree that this isn't -- that we shouldn't bifurcate
 7 substance and process. It exists somewhat on a spectrum. And
 8 because of that, we do need to look to outcomes to adjudge
 9 whether or not the process is, indeed, fair and adequate.

10 Again, I think the critiques we bring are, of course, made
 11 in good faith and not to disrupt the needed change that needs
 12 to come to this city and was promoted by the DOJ coming in and
 13 bringing this lawsuit and the advocacy from the various parties
 14 to this lawsuit because, somewhat piggybacking on
 15 Ms. Marshall's testimony earlier today, I, too, have sometimes
 16 severe depression or anxiety. This is a very personal issue
 17 for a lot of folks in the community, in our profession. And at
 18 this point, without there having been enough trust built
 19 between the parties, I, too, would fear, if things got
 20 terrible, of ever calling the police in such a circumstance.

21 So for those reasons we still stand by our briefing.

22 THE COURT: All right. I appreciate those comments
 23 and your briefing.

24 Let me ask you, Mr. Chavez and/or Ms. Albies, or both of
 25 you, the following legal question: If the United States, as

1 the plaintiff in this case, continues to be of the opinion that
2 there's substantial compliance with the settlement agreement
3 and do not make any type of enforcement motion, what options or
4 authority or alternatives would the Court have?

5 MS. ALBIES: So I think the Court has inherent
6 authority to have ongoing status conferences and to request
7 information as from the outset of this case. It's not an
8 evidentiary hearing. It's information-sharing. And I would
9 posit that the information-sharing throughout this process at
10 every hearing that we have had has been really helpful to
11 helping the parties identify issues and concerns, having
12 community engagement with the settlement agreement, with the
13 problems that have been identified. Even for folks that come
14 and testify here, and maybe their testimony is not precisely on
15 point to the issues that are in front of the Court, they're
16 still given a forum and being listened to and heard and
17 affirmed in a certain way they don't feel in other spaces, and
18 I think that's very important for a lot of people. And I think
19 we all learn from those experiences of hearing people being
20 able to articulate some of their concerns.

21 And I think when we invite the community to testify -- and
22 I think Your Honor does a good job of modeling how to engage in
23 respectful communications with people -- I think that there are
24 a lot of really wonderful ideas that come from the community
25 that aren't borne out of people with training or education but

1 are, nonetheless, really important and valuable and creative
2 and that that can spark really important discussions, and I
3 think this forum allows that to continue.

4 So I do think the Court has inherent authority to allow
5 these ongoing hearings, and the conditional approval is a
6 vehicle by which those hearings can continue.

7 THE COURT: I will tell you that this concept of
8 inherent authority of the Court is an ill-defined and probably
9 overstated authority, but it is definitely ill-defined in the
10 case law.

11 All right. I broach that as a hypothetical. Let me tell
12 you what I'm tentatively thinking now and give you all an
13 opportunity to comment on it briefly, and then I think we need
14 to close for the day.

15 I still am not prepared to find that the stipulated
16 amendment creating the PCCEP is facially adequate. I think
17 it's been some -- it's been very positive. It's going in a
18 good direction; although not without some hiccups and not
19 without, frankly, some problems. I occasionally use the
20 analogy of three steps forward, two steps back, but that's
21 still progress. Where is the line between progress and facial
22 adequacy? That's not that clear to me. But given the number
23 of problems we've heard, I don't feel comfortable right now
24 concluding that it's facially adequate, nor am I prepared to
25 say that it's facially inadequate.

1 So although I know that some of the parties here won't
2 like this result, I am going to defer again ruling on the
3 proposed amendment with respect to PCCEP. It is conditionally
4 approved, but I'm not yet ready to give it final approval.

5 I will also say that I have not heard anything at all
6 today that gives me -- that I find at all plausible that the
7 fact that I only made a conditional approval and not a final
8 approval in any way contributes to some of the problems or
9 inadequacies or the steps backward that we have heard about
10 PCCEP and nor am I convinced if I were to say I give it final
11 approval, as opposed to conditional approval, that that will
12 make all of those problems go away and solve all of the issues
13 going forward.

14 If anybody disagrees, you're welcome to file a petition
15 for an evidentiary hearing, and I'll take evidence on that, but
16 I've given several of the counsel that opportunity, at least so
17 far today, and nobody has taken me up on that. I don't think
18 the fact that I have only given it conditional and not final
19 approval in any way contributes to the problems we have heard
20 about or interferes with its ability to move forward and be
21 even more successful.

22 I do think there's been a lot of success to the PCCEP.
23 It's not perfect, but it's going in a very good direction, I
24 think.

25 So I'm deferring ruling. I'm not rejecting it, but I'm

1 not approving it with final approval. I'm deferring approval.

2 I think, and this is what I really mainly want everyone's
3 input on, I don't see a benefit to convening another status
4 conference in about six months. If you all really think that
5 there is, tell me, but I don't think that there's a whole lot
6 of benefit of doing that. So what I would be tentatively
7 inclined to do is to schedule another status conference for
8 about 12 months from now. As I said, I'd be looking at the end
9 of February, early March. My calendar in those periods are
10 reasonably open, so I'll be glad to accommodate travel
11 schedules, especially people from -- with out-of-town travel
12 needs or other scheduling needs. I'll be glad to accommodate
13 that. I'm relatively open last portion of February, early
14 portion of March.

15 And what I would anticipate happening at that conference,
16 much like we have had today and in previous conferences, taking
17 public comments, hearing from the parties, including the amici,
18 and then the question that I would be looking for and obviously
19 we don't have the answer now because nobody can see in the
20 future -- what's that old Yogi Berra line? Making predictions
21 is very difficult, especially about the future. So we can't
22 predict the future.

23 But one possibility -- frankly, I can see two different
24 possible scenarios. One possibility is when we come together
25 in about 12 months from now, the plaintiff, the United States,

1 will say to me and say in its filings that we believe that
2 substantial compliance was achieved as of January 10, 2020, and
3 we believe that there's been sustained substantial compliance
4 for a period of 12 months since then, and so the plaintiff, the
5 United States, moves to essentially terminate this proceeding.
6 That is certainly one possibility.

7 And if the government -- if the United States were to make
8 that motion and make that statement and if any of the amici --
9 I assume the City would probably not disagree with that motion.
10 If the amici disagrees with it, then I also anticipate not only
11 hearing factually and substantively why you disagree, but,
12 perhaps, even more importantly, legally, what, if anything, can
13 be done about it? That is not an easy legal question to solve.

14 So if we go that direction, if that's the position of the
15 United States and if the amici were to disagree, I would look
16 to the parties to give me their respective positions on what,
17 if any, legal authority the Court has to deal with that.

18 Now, of course, there is a possibility that the amici will
19 agree that the position of the United States is that there's
20 been sustained substantial compliance. I think we all agree,
21 as, frankly Dr. Haynes eloquently expressed, substantial
22 compliance does not mean perfection. This is a process. It is
23 envisioned and it was envisioned by the settlement agreement
24 that the City would continue to make substantial progress going
25 forward, even after this lawsuit is over, working with people

1 like AMAC, with MHS, with the PCCEP, because that, as I
2 understand the proposed amendment, is planned to go beyond the
3 life of the settlement agreement and the lawsuit, and so that
4 perhaps the amici may agree -- if that's the United States'
5 position a year from now -- that we have made progress. Maybe
6 not -- it may not be perfect; that there may still be things to
7 do. There probably will be. But we're ready to move onto the
8 next phase of the relationships, and that is the phase without
9 the continued oversight of the United States and without the
10 continued involvement of the federal court.

11 That may be the amici's position a year from now.

12 That's another possibility.

13 Still another possibility is that the United States will
14 take the position that, no, there has not been sustained
15 substantial compliance. I assume the City may or probably
16 would disagree, but they may not, and then we talk about, well,
17 now what do we do, and what happens next under the framework of
18 the settlement agreement?

19 There may be a fourth possibility that I can't think of
20 right now, but those are the three possibilities that come to
21 mind. And I believe none of us can predict which one of those
22 three possibilities, or some other possibility, will be present
23 before us in 12 months, but we'll find out what things look
24 like in 12 months. But I don't see a benefit, unless somebody
25 wants to try to talk me out of it, of meeting between now and

1 then. So what I think we should do is schedule our next
2 hearing approximately 12 months from now.

3 Does anybody want to be heard on anything I just said or
4 anything else?

5 Ms. Albies?

6 MS. ALBIES: Your Honor, Dr. Bethel had a suggestion
7 that I think is a good one, that the parties would agree to
8 meet at least every two months and work on the definition of
9 success for PCCEP and provide a written report to the court in
10 six months. I did not confer with the DOJ or the City on this.
11 I'm just floating it now. But I think, given the testimony we
12 heard, it might be a good path forward in the interim.

13 THE COURT: Well, as a friend of the Court, I will
14 say that I think that sounds like a great idea. I don't
15 think -- I'm not ordering it. I don't think I have the
16 authority to order it, but I leave it to the parties to
17 discuss, and whatever you send me, I will read.

18 Ms. Reeve?

19 MS. REEVE: Your Honor, I think -- we would be happy
20 to meet. We would be happy to talk about how the PCCEP can be
21 successful. We also feel strongly that it's important that we
22 have legal criteria for the success of the PCCEP. And so my
23 only objection, if you will, to the proposed schedule of not
24 getting back together again until February or March of next
25 year is that that does not give the City certainty as to what

1 it is substantially complying with.

2 And so, again, we would request that the Court now grant
3 final approval as to the settlement agreement amendments, and
4 we would have, then, no objection to coming back at that time
5 to discuss our substantial compliance, or lack thereof, with
6 those. But to invest another 14 months in attempting to
7 achieve substantial compliance with goalposts that may move is
8 a difficult and, we would submit, untenable legal position to
9 put, certainly, the City -- that's the party trying to be in
10 and trying to maintain substantial compliance -- in.

11 THE COURT: As I said, because I believe that my
12 giving the PCCEP structure only conditional approval and not
13 final approval has created absolutely no problem at all for the
14 PCCEP. It doesn't contribute to the problems that have been
15 identified. It doesn't inhibit it from moving forward in a
16 positive direction. I'm rejecting your motion.

17 That said, if you want to schedule an evidentiary hearing
18 where evidence will be presented, let me know whether the
19 parties want discovery, where there will be cross-examination,
20 I will be glad to revisit that question, and then just contact
21 my courtroom deputy when you want to schedule a hearing.

22 MS. REEVE: I'm sorry, Your Honor. I may not be
23 articulating clearly my concern. My concern is not that the
24 lack of certainty is impeding the functioning of the City's
25 ability to comply with the conditionally approved amendments.

1 My concern is that we may invest another 14 months in complying
2 with conditionally approved amendments that may then -- I
3 assume the only reason they're only conditionally approved is
4 that Your Honor is essentially reserving the right to find
5 they're not fair, adequate, and reasonable. And if
6 Your Honor -- if that is the outcome, we would like to know
7 that so that we can work towards something that would be fair,
8 adequate, and reasonable.

9 So that's my concern, is that it's another 14 months
10 without knowing that what we are substantially complying with
11 is, in fact, the legal obligation that we have.

12 THE COURT: That's a fair question, and I would say
13 this: Confer with each other. If the City; the intervenor,
14 Portland Police Association; the amicus curie, Mental Health
15 Alliance; the amicus curie, AMAC; and the United States -- if
16 those five parties all agree on either how to define what are
17 the requirements or the metrics to find the proposed amendment,
18 fair, adequate, and reasonable, I really cannot imagine
19 disagreeing with the five of you.

20 If you all agree that -- even if you can't agree on those
21 metrics and the definition, if you all agree that sustained
22 substantial compliance has been achieved, it would be my
23 expectation and anticipation that I would then give final
24 approval both to the amendment and to any motion to terminate
25 the litigation if you all agree.

1 That is scenario one.

2 Under scenario two, if there's disagreement, then whoever
3 disagrees -- I mean, assuming that the United States makes the
4 motion that there's been sustained substantial compliance and
5 that the -- if the amendments should be given final approval
6 and the litigation dismissed, I think the burden will then be
7 on anybody objecting to that to give me the legal basis for
8 what, if anything, I should do and how I should do it and what
9 would be the right answer. And whether or not there's facts in
10 dispute, we, then, would probably have to schedule an
11 evidentiary hearing. If there's no facts in dispute but just
12 legal consequences, that would probably be handled summary
13 judgment style. But that's as good as I can get it right now.

14 So you raise a fair question, but raise it with the amici,
15 with the intervenor, and with the United States, to see if you
16 can all agree on what sustained substantial compliance,
17 including with the proposed amendments, would look like.

18 That's as good as it's going to get.

19 Anyone else wish to say anything?

20 All right. Oh, okay. Then any preferences for when in
21 the latter part of February, early part of March, you would
22 like to have a hearing?

23 MR. GEISSLER: Your Honor, I'd really request, as
24 before, it not be a Monday or a Friday so the United States can
25 avoid travel.

1 THE COURT: I remembered that. That's fine.

2 Mary, any suggestions or requests or days or weeks to
3 avoid?

4 DEPUTY COURTROOM CLERK: We can set it for the 25th
5 of February at 9:00 a.m., which is a Thursday, if that --

6 THE COURT: One moment. Will that work for you all?
7 February 25th? We'll call it one year to the day?

8 MR. GEISSLER: Yes, Your Honor.

9 MS. REEVE: Yes, Your Honor. Thank you.

10 THE COURT: Next status conference is Thursday,
11 February 25, 2021, 9:00 a.m. in this courtroom.

12 Thank you, all. I appreciate everyone's contributions.

13 || (Hearing concluded.)

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1 C E R T I F I C A T E
2

3 United States of America v. City of Portland

4 3:12-cv-02265-SI

5 Status Conference

6 February 25, 2020

7
8 I certify, by signing below, that the foregoing is a
9 true and correct transcript of the record, taken by
10 stenographic means, of the proceedings in the above-entitled
11 cause. A transcript without an original signature, conformed
12 signature, or digitally signed signature is not certified.

13
14 /s/Jill L. Jessup, CSR, RMR, RDR, CRR, CRC

15
16 Official Court Reporter
Oregon CSR No. 98-0346

Signature Date: 4/16/2020
CSR Expiration Date: 9/30/2020